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Letter dated 7 November 2008 from the Chairman of the Security Council Committee established pursuant to resolution 1591 (2005) addressed to the President of the Security Council

On behalf of the Security Council Committee established pursuant to resolution 1591 (2005) concerning the Sudan, I have the honour to transmit herewith the final report of the Panel of Experts on the Sudan as requested by the Security Council in paragraph 2 of resolution 1779 (2007) (see annex).

The attached report was presented to the Committee on 10 October 2008, and was subsequently considered in the Committee on 4 November 2008, once it had been translated in all languages.

I will present to the Security Council shortly the Committee's views on the report and any follow-up to the recommendations contained therein.

I would be grateful if this letter and its annex were issued as a document of the Security Council.

(*Signed*) Giulio **Terzi di Sant'Agata**
Chairman
Security Council Committee established pursuant
to resolution 1591 (2005) concerning the Sudan

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Annex

Letter dated 1 October 2008 from the Coordinator of the Panel of Experts on the Sudan addressed to the Chairman of the Security Council Committee established pursuant to resolution 1591 (2005)

On behalf of the members of the Panel of Experts established pursuant to Security Council resolution 1591 (2005) concerning the Sudan, I have the honour to transmit herewith the report of the Panel prepared in accordance with paragraph 2 of Security Council resolution 1779 (2007).

(*Signed*) Thomas W. **Bifwoli**
Coordinator
Panel of Experts on the Sudan established pursuant
to Security Council resolution 1591 (2005)

(*Signed*) Awni **Al-Momani**
Expert Member

(*Signed*) Ian **Rowe**
Expert Member

(*Signed*) Patrick **Schneider**
Expert Member

Report of the Panel of Experts established pursuant to resolution 1591 (2005) concerning the Sudan

Summary

During the present mandate period the Panel of Experts notes continued flagrant violations of the arms embargo by all parties in Darfur. These violations allow both the Government of the Sudan and the Darfur armed groups to continue to conduct offensive military operations both inside and outside Darfur.

Within Darfur the actions of all sides make it clear that a military solution to the conflict has been chosen over any substantive engagement in peace talks. Attempts to bring the warring parties to the negotiating table or to broker ceasefires have failed. The Darfur armed groups have further fragmented and insecurity continues to increase and is largely unaddressed. Offensive military overflights continue with impunity and both the major armed groups and the Sudanese army have continued to carry out attacks.

The replacement of African Union peacekeeping forces with a new African Union-United Nations hybrid force has not produced the security dividends expected. Ten months into its deployment the new force has continued to be attacked in the same way as its predecessor and has proven so far to be incapable of defending itself or the civilian population of Darfur or fulfilling its obligations to monitor the arms embargo in accordance with the relevant provisions of its mandate.

Within this context of continued violations there has also been a serious expansion of the conflict from Darfur into the wider region. Armed groups from Darfur have repeatedly expanded their attacks outside Darfur and these attacks have now even reached the capitals of both Chad and the Sudan. It is undeniable that a proxy war is being carried out between the Sudan and Chad through non-State actors in and around Darfur. Armed opposition groups are supplied and armed on their respective territories with the active support and encouragement of the two host Governments and their respective military and intelligence branches. Arms and related military materiel delivered to Chad and the Sudan outside of the provisions of the embargo and the territory concerned by it are diverted into Darfur and fuel the conflict.

The consequences of these ongoing violations and regional escalation of the conflict are most acutely seen in the effects on the civilian population of Darfur. Humanitarian access has continued to decrease across the three States of Darfur as insecurity grows. Violations of international human rights and humanitarian law continue incessantly and violators continue to operate in a culture of almost total impunity. The civilian population displaced into refugee and displaced persons camps continues to grow as a result of ongoing conflict, and attacks in these camps themselves have escalated.

In order to address this situation, the Panel recommends:

(a) That the Security Council revisit options for widening the arms embargo coverage to include the entire territory of the Sudan and consider further expansion of the embargo to include Chad and northern parts of the Central African Republic;

(b) That arms embargo monitoring be mainstreamed immediately within the operational structures of the African Union-United Nations Hybrid Operation in Darfur as well as other United Nations peacekeeping operations and the European Union protection force deployed in the region. These operations should be given both the mandate and the necessary resources to monitor and robustly enforce an extended embargo;

(c) That the Panel of Experts on the Sudan be supported with the additional capacity in terms of personnel and resources necessary to coordinate the monitoring and investigation of violations of this extended embargo and to liaise accordingly with regional peacekeeping missions;

(d) That the Security Council significantly enhance the capacity of the Panel of Experts in order to conduct a greater number of in-depth investigations into allegations of violations of international humanitarian and human rights law.

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Abbreviations

AMIS	African Union Mission in the Sudan
CRP	Central Reserve Police
EUFOR	European Union-led military force in Chad and the Central African Republic
JEM	Justice and Equality Movement
MINURCAT	United Nations Mission in the Central African Republic and Chad
NISS	National Intelligence and Security Service
OHCHR	Office of the United Nations High Commissioner for Human Rights
PDF	Popular Defence Forces
SAF	Sudanese Armed Forces
RFC	Rally of Forces for Change
SLA	Sudan Liberation Army
SLM/A	Sudan Liberation Movement/Army
SLA/AS	SLA-Abdul Shafi faction
SLA/AW	SLA-Abdul Wahid faction
SLA/FW	SLA Free Will
SLA/MM	SLA-Minni Minawi faction
SOGECT	Société Génerale de Commerce, Construction et Transport
UNHCR	Office of the United Nations High Commissioner for Refugees
UNAMID	African Union-United Nations Hybrid Operation in Darfur
UFDD	Union of Forces for Democracy and Development
UFDD-F	Union of Forces for Democracy and Development — Fundamental
UNMIS	United Nations Mission in the Sudan
WFP	World Food Programme

I. Introduction

1. The present report of the Panel of Experts on the Sudan is the fifth formal report submitted for the consideration of the Committee established pursuant to Security Council resolution 1591 (2005). Although some background context is provided, the report does not attempt to delve into extended analysis of the historical developments and evolution of the Darfur crisis. Instead the reporting focus is on the current mandate period. The present report should be read in conjunction with previous Panel reports, which provide additional contextual details.

2. In its resolution 1591 (2005), the Security Council requested the Secretary-General, in consultation with the Committee established under the same resolution, to appoint a Panel of Experts to assist the work of the Council and the Committee. The Panel was first appointed on 30 June 2005. The mandate of the Panel was subsequently extended on four occasions, most recently until 15 October 2008 by Security Council resolution 1779 (2007).

3. The Panel was convened in January 2008 and began active fieldwork in February 2008. The present report, submitted pursuant to Security Council resolution 1779 (2007), presents the findings and recommendations of the Panel for the period from 28 September 2007 to 19 September 2008.

4. The mandated task areas of the Panel's work are drawn from Security Council resolutions 1556 (2004), 1591 (2005) and 1779 (2007), and can be summarized as follows:

(a) To assist the Committee in monitoring implementation of the measures in paragraphs 7 and 8 of resolution 1556 (2004) and paragraph 7 of resolution 1591 (2005), concerning the arms embargo;

(b) To assist the Committee in monitoring implementation of the measures in subparagraphs 3 (d) and 3 (e) of resolution 1591 (2005), concerning targeted financial and travel-related sanctions;

(c) To make recommendations on actions the Security Council may wish to consider.

5. Furthermore, Security Council resolution 1591 (2005) identified the Panel as a source of information to the Committee regarding individuals who (a) impede the peace process or constitute a threat to stability in Darfur and the region; (b) commit violations of international humanitarian or human rights law; (c) violate the arms embargo; or (d) are responsible for offensive military overflights.

6. In addition to these four substantive task areas, the Panel is mandated to travel regularly to locations throughout the Sudan and the region from a base in Addis Ababa. The Panel is required to coordinate its activities, as appropriate, with the African Union-United Nations Hybrid Operation in Darfur (UNAMID), successor to the operations of the African Union Mission in Sudan (AMIS). Additional coordination was necessary between the Panel and the United Nations Mission in the Sudan (UNMIS), the United Nations Mission in the Central African Republic and Chad (MINURCAT) and the European Union-led military force in Chad and the Central African Republic (EUFOR).

7. The following sections convey the Panel's findings and recommendations and outline operational and procedural aspects of the Panel's work. Section II describes the working principles and procedures to which the Panel endeavoured to adhere. Section III provides the background to implementation of the arms embargo and its associated elements and outlines the evolving political and security context within which the Panel undertook its activities during the current mandate period. Sections IV through XIV present the findings and recommendations of the Panel concerning the: implementation of targeted financial sanctions; embargo violations by the Government of the Sudan; aviation assets, air rotation and delivery of equipment; the February 2008 attacks in Western Darfur; support by the Government of the Sudan for non-State armed groups; Darfur rebel groups; the supply of arms and related materials to rebel movements; the use by JEM of children in an armed attack; human rights violations; the financial aspects of embargo violations; and the impact of attacks on international organizations and UNAMID.

8. The Panel of Experts wishes to acknowledge the invaluable contributions of the consultants who assisted it: Enrico Carisch, who assisted the Panel from July to August 2008, and David Huxford, who worked with the Panel for the duration of its mandate.

II. Working principles and constraints

A. Working principles

9. The approach utilized by the Panel of Experts over the course of its mandate is that of being an impartial, apolitical, independent fact-finding body. The Panel interacts with any individuals or entities that it considers may have information relevant to its mandate. The Panel is cognizant that it will interact with politicized individuals or entities and thus must insulate itself from undue influence. The Panel refrains from engaging in political discussions with the individuals or entities with whom it interacts. Its work is based purely upon the terms of its mandate and direction received from the Security Council Committee established pursuant to resolution 1591 (2005).

10. The Panel members take internal substantive and procedural decisions jointly. Where procedural disputes arise, decisions are made by a majority vote of its members. Where substantive disputes arise, the Panel makes decisions by majority vote. In the latter case, the majority must include the consenting vote of all members whose areas of expertise are directly involved with the issue.

11. Methods of information collection include the comprehensive review of published documents, interaction with governmental and non-governmental organizations, non-State actors and United Nations entities, and the Panel's own investigations and monitoring. These activities are conducted within the practical constraints imposed by United Nations security rules, logistical resources, Member State assistance and the personnel constraints of a Panel consisting of four members supported by two consultants. The Panel does not have the power to subpoena information and relies on the principles of confidentiality and protection of sources in order to encourage information to be willingly provided. Above all the Panel endeavours to obtain first-hand evidence.

12. The assessment of the reliability of information gathered and analysis of this information conforms to the internal procedures of the Panel, as outlined above. The Panel considers information on a case-by-case basis. It determines relevance and reliability on the basis of its knowledge of the source; the methods used for collection and transmission of the information; and the wider working context. Information is used and presented in a way that reflects the Panel's assessment of its reliability.

13. In the presentation of information, analysis and recommendations to the Committee, all practical efforts are made to give the right of reply to an accused individual or entity and to contact all parties relevant to an event. Specific information relating to sources is provided when deemed necessary and with the consent of that source, apart from cases of admission or confession evidence.

B. Working constraints

1. Capacity

14. The Panel of Experts is a four-person Panel supported by one full-time and one part-time consultant. Its mandate requires it to monitor and investigate violations of an arms embargo that is currently imposed on an area of nearly half a million square kilometres bordering Chad, the Libyan Arab Jamahiriya and the Central African Republic.

15. To the south and east the territory of Darfur is bordered by an unmonitored area of southern Sudan, to the south-west by inaccessible parts of the Central African Republic, and to the north-west by sparsely inhabited Libyan desert. The airspace, roads and desert of Darfur, and those which link Darfur to other states of northern Sudan are largely unmonitored. Bordering Western Darfur is Chadian territory occupied by an alliance of the Chadian national army and Darfur armed groups.

16. Darfur itself is occupied by more than 20 domestic armed groups and multiple shifting alliances of both foreign-armed groups and local militia defence forces. A minimum of three divisions of the Sudanese Armed Forces (SAF) including mechanized infantry, heavy armour, support weapons and special forces are deployed in the three Darfur States. SAF is further supported by extensive air assets including transport and attack helicopters, cargo planes used as bombers, reconnaissance aircraft and jet fighters. Unknown numbers of militias and paramilitary units operate both under and outside the command of Government authorities. A powerful layer of military and civilian intelligence authorities is operational in all population centres.

17. Owing to logistical, security and personnel constraints both the terrain and the belligerent parties remain largely unmonitored. The demands imposed on the Panel by its mandate far exceed its capacity.

2. Security situation

18. During the reporting period the Panel faced several work constraints linked to the overall declining security situation in Darfur.

19. Overland travel was severely limited in Chad and impossible in Darfur because of widespread banditry and carjacking. This was experienced first-hand by one Panel member who along with other United Nations staff was involved in a carjacking incident in El Fasher. Rebel threats to shoot down white aircraft, owing to the reported use by the Government of the Sudan of white aircraft in a military capacity, has also made travel by air more dangerous. The Panel gained first-hand experience of this as well, having been targeted and fired upon by rebel forces during a field mission using a United Nations helicopter.

20. The Panel was frequently wrongly perceived as being associated with the International Criminal Court, leading to concerns with respect to movement inside the country and the security of its members. In particular following the announcement in July of the indictment of Omer Al-Bashir, the President of the Sudan, the Panel had to be evacuated from the Sudan for an extended period and ongoing investigations were interrupted.

3. Multiple-entry visas

21. The Panel has repeatedly raised the necessity of having multiple-entry visas for all its members. During the most recent reporting period, only single-entry visas were issued to Panel members until nearly the end of the mandate period. At that time two members of the Panel were issued with multiple-entry visas valid for one month, and one member was issued with a multiple-entry valid for one year. Given that it has been demonstrated that the issuance of multiple-entry visas by the Government of the Sudan is possible, the Panel recommends that the practice be continued and extended to all members of any future panel of experts for the full period of any new mandate period.

4. Cooperation with the Government of the Sudan

22. Cooperation with the Government of the Sudan can be broadly classified into two phases. The first phase covers the period prior to the Panel's submission of its midterm report in May 2008, before the attack on Omdurman by JEM forces. The second phase runs from the presentation of the midterm report up until the end of August 2008.

23. During the first phase, the Panel received good cooperation from representatives of the Government of the Sudan in Khartoum. The Panel's requests for information were responded to in meetings and in writing apart from two notable cases, namely the organizing of meetings with the Western Military Command and the receipt of information from the Civil Aviation Authority.

24. The second phase, that following presentation of the midterm report to the Sanctions Committee, saw a turnaround in Government cooperation. Provision of information was lacking across the board and numerous meetings were repeatedly delayed or never materialized at all despite repeated requests. The Government also made efforts to restrict the Panel's independence by attempting to impose rules on its interaction with commercial, private sector and other non-governmental entities or individuals

III. Background context during the mandate reporting period

25. The Darfur conflict in the Sudan is set within the context of an armed uprising fuelled by sentiments of political, economic and social marginalization. Evolved from what had previously been considered low-level fighting periodically marked by large-scale "tribal" clashes, the parties to the early stages of the subsequent uprising were clearly identifiable. Proclaiming resentment against a central Government perceived to discriminate in favour of one tribal grouping over another, SLA and JEM originated from "African tribes"[1] and together represented the armed expression of the oppressed. Both movements enjoyed financial, logistical and military support from a range of regional and extraregional Governments thus serving to incorporate an arguably domestic conflict within the larger regional power politics dynamic and impact directly upon international peace and stability.

26. The Government initially utilized the armed forces as its primary tool to combat the insurgent threat but found them to be overmatched by a well-organized and coordinated military resistance from the rebel movements. Overstretched by an extended ongoing conflict in southern Sudan and facing mounting defeats in Darfur, the Government adapted its approach and responded to rebel field successes by allying itself with and arming militias composed from "Arab tribes" in the region later commonly referred to as "the Janjaweed".[2] Government forces and Arab militias jointly confronted rebel forces while heavily targeting the civilian villages and populations from which they derived, committing large-scale violations of international humanitarian and human rights law. Civilian casualties, deaths and suffering of unknown proportions resulted from both direct attacks and war-induced humanitarian crisis.

27. Early attempts at negotiated peace were made and the deployment of an observer mission to ensure compliance was authorized. Unfortunately these efforts failed to yield the desired result as the mission was woefully underequipped and the parties to the conflict unapologetically engaged in regular violations of the agreements they had signed.

28. Against this backdrop of internal domestic and external regional power struggles, failed peace negotiations and continuous devastation, civilian insecurity and humanitarian disaster, the Security Council adopted resolutions 1556 (2004) and 1591 (2005). By these resolutions the Council called for an end to offensive military overflights; established an arms embargo on Darfur; and imposed a travel ban and assets freeze on designated individuals deemed as impeding the peace process, constituting a threat to stability and committing violations of international humanitarian or human rights law.

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[1] The terms "African" and "Arab" tribes have traditionally been used within the Darfur context to define conflict parties along ethnic lines. Both terms are used here within that context. The Panel views both terms as largely subjective, however, and given the complex new dynamics of the Dafur conflict believes that such distinctions are no longer viable as clear identifiers of the parties to the conflict.

[2] The Panel views the definition of the term "Janjaweed" as largely a matter of perception, particularly given the constantly evolving ground situation. Witness statements taken by the Panel, however, consistently define "Janjaweed" as militias coming from those communities perceived as "Arab" (see note 1 above), pro-Government militias and/or other armed Government entities. Although the Panel does not consider the term representative, it is used here and throughout the present document in accordance with witness statements.

29. In the period following the inception of the embargo the situation in Darfur has followed a seemingly inexorable descent into chaos. Parties to the conflict are no longer easy to delineate. Where once two rebel movements composed the principal elements of a popular uprising, by 2005 this had grown to between 8 and 10 groups and has now ballooned to over 20 declared movements claiming to represent the best interests of the Darfurian people. This has been fuelled by arms, ammunition, training and logistical support from neighbouring States and other international actors. Incessant jockeying for position by the armed groups, their persistent inability to unify and alleged ongoing Government efforts to divide and conquer have resulted in a virtual political impasse and presented a significant stumbling block to peace negotiations.

30. The regional dimensions of the conflict have become increasingly pronounced, particularly with respect to the deterioration of relations between Chad and the Sudan. On 8 February 2006 the two Governments signed the Tripoli Agreement, by which they promised to cease the provision of support to each other's respective rebel groups. On 3 May 2007, the two Governments concluded a reconciliation agreement in Saudi Arabia followed by a non-aggression pact in Senegal on 14 March 2008, further committing themselves to improving relations, adhering to the Tripoli Agreement and joining an observer group led by the Libyan Arab Jamahiriya and the Congo to monitor compliance. Despite being instilled with a mechanism for enforcement, these agreements failed to prevent a significant heightening of tensions between the two countries. Instead, the prevalence of deep tribal ties and allegiances along their common border, combined with an entrenched mutual history of actively supporting each other's respective insurgent groups, continued unabated and even led to an increase in military activities.

31. This state of affairs has not escalated to an open declaration of war by either side. Nevertheless, the use of armed proxies to advance their distinct agendas is undeniable. With both countries serving as sanctuaries and staging grounds for insurgent activity, relations between them reached a new low with the complete breakdown and severing of diplomatic relations on 11 May 2008, following concerted attacks on N'Djamena and Khartoum by rebel movements in January and May respectively. Relations were resumed in July with reaffirmations, yet again, of commitment to former agreements and fresh accords signed in Senegal pledging both countries to the arrest of hostile campaigns and the convocation of a tripartite summit between their Presidents and the Libyan leader, Muammar Al-Qadhafi.

32. Employing a deliberate strategy of mass population displacement, the dismantlement of local community structures and repeated offensives against civilian targets, the Government of the Sudan and its affiliated militias have continued to launch attacks with purposeful regularity, disregarding international humanitarian and human rights law. The result has been the razing of villages; the summary killing of civilians; a continual practice of rape and sexual violence against women and girls throughout Darfur; a refugee population of over 250,000[3] and a steady increase in the number of internally displaced people, which grew from roughly 1.6 million in December 2004 to over 2.45 million by March 2008.[4]

[3] UNHCR statistical population database.

[4] Office of the Deputy Special Representative of the Secretary-General for the Sudan and Resident and Humanitarian Coordinator, Darfur Humanitarian Profile No. 9 (December 2004); Office for the Coordination of Humanitarian Affairs, Humanitarian Access Profile (March 2008).

33. The arsenal of weaponry used by Government forces in their premeditated and deliberate attacks includes both air and ground military assets and continues to expand as the purchase of new technologies continues unabated year upon year.

34. Rebel movements, hardly blameless of violations in their own right, have engaged in blatant contravention of the arms embargo, banditry, criminality, extortion, attacks on United Nations and humanitarian actors and violations of international humanitarian law and human rights law, including the recruitment of children, arbitrary arrest and detention, maltreatment and torture.

35. AMIS, the observer mission deployed by the African Union in August 2004 following the signing of the N'Djamena Ceasefire Agreement on 8 April 2004, faced severe difficulties throughout its mandate. Perennially deficient in international support and thus in its deployment resources, the mission was largely ineffective and continuously suffered from a lack of equipment, capacity and staffing. It experienced repeated armed attacks against its personnel, the worst of which, directed at the military group site in Haskanita in September 2007, killed 10 of its soldiers and injured 8.

36. UNAMID, the African Union-United Nations hybrid operation that replaced AMIS in January 2008, faces the same logistical and operational challenges. Having been subjected to major armed attacks on its support convoys in January, immediately following deployment, and in April, as well as a major offensive in July, the mission has already suffered major casualties and appears to be headed down a similar path to that of its predecessor.

37. This has been accompanied at the regional level by the establishment of a multidimensional presence composed of MINURCAT and EUFOR, the European Union's bridging military operation in eastern Chad and the north-eastern Central African Republic. Any resulting security dividend in Darfur has yet to become apparent.

38. New developments have arisen recently with respect to the military role of Arab tribes in the Darfur crisis. The Government of the Sudan avows that the Janjaweed no longer exist as militias and have been integrated in the official State security apparatus. This is undoubtedly true for some of these militias which, having been incorporated in structures such as the Central Reserve Police, receive weapons, equipment and logistical and financial support from the GoS and carry out civilian and military attacks in concert with SAF forces. There remain other Arab militias, however, outside the official State entities, that continue to operate in a fashion that previously would have had them termed Janjaweed.

39. Not all Arab tribes are allied with the Government, however. Having elected to remain neutral in the conflict, these communities are now also suffering the effects of the humanitarian crisis. Increasing in importance are still other Arab tribes previously partnered with the Government but now pursuing new individualized agendas that differ considerably from the Government's strategic goals and objectives. No longer convinced of the Government's dedication to their best interests, they express disillusionment in the face of broken promises, underdevelopment and overt manipulation of their communities to the benefit of the Government's political ambitions. This has even resulted, in certain cases, in partial alliances with rebel movements. However, despite these apparent changes to the previous status quo of a debatably clear ethnic divide between conflict parties,

Government-directed large-scale attacks and atrocities continue to be committed on civilian targets, often with appalling intensity.

40. Throughout Darfur increasing banditry, criminality and vehicle hijacking have accompanied the fragmentation of rebel movements and the increasing discontent of Arab tribal militias. The steadily worsening lawlessness, thefts, related killings and sexual violence, in combination with Government military activities, is making the plight of vulnerable populations ever more precarious while the access of United Nations, humanitarian and commercial actors plummets.

IV. Implementation of targeted financial and travel sanctions

41. By its resolution 1672 (2006) of 25 April 2006, the Security Council designated four individuals for travel and financial sanctions. In its previous report to the Committee, dated 3 October 2007 (S/2007/584, annex, paras. 143-146), the Panel provided further identifying information on some of the four designated individuals. This information was consequently circulated to Member States to aid in the implementation of resolution 1672 (2006). During the current reporting period, the Panel continued to monitor the implementation of the resolution. The Panel has written to several Member States requesting information on the status of its implementation and has so far visited Chad, the Sudan, Egypt and the Libyan Arab Jamahiriya to monitor the implementation of the sanctions.

A. Government of the Sudan

42. In a meeting with the adviser to the Minister of Finance of the Sudan, the Panel was informed that there was no instruction in place for the freezing of assets of Sudanese nationals designated for sanction under resolution 1672 (2006). Two individuals designated for travel and financial sanctions are employed by the Government of the Sudan and are believed to be earning a salary.

43. Musa Hilal was appointed by presidential decree as an adviser to the Federal Ministry on 16 January 2008. In April and again in August 2008, the Panel requested a meeting with him through its focal point in the Ministry of Foreign Affairs. The meeting never materialized. Additionally it was never clarified as to whether Musa Hilal had travelled out of the country within the reporting period or whether his assets had been frozen by the Government.

44. Gaffar Mohmed Elhassan is serving in SAF and is based in Khartoum. The Panel's Government focal point, General Al-Dabi, informed the Panel that Gaffar Mohmed Elhassan does not have any tangible assets to be frozen.

45. The precise whereabouts of Adam Yacub Shant are not known but it is believed that he continues to operate from Sheria, Southern Darfur. The Panel has no information on the implementation of sanctions on this individual.

46. The Panel reports that the Government of the Sudan has not implemented resolution 1672 (2006) in spite of the fact that two of the designated individuals are in its employ.

B. Government of Chad

47. In a meeting with the Ministry of Justice of Chad in March 2008, the Panel was informed that resolution 1672 (2006) had been fully implemented by the Government. Judicial authorities ordered this implementation and have stated that they have passed information concerning the sanctions to all points of entry and police stations in Chad.

48. The Panel has received credible information that General Gibril Abdul Kareem Barey (also known as Gibril Tek) is now living in N'Djamena. He is still an active member of the National Movement for Redemption and Development.

49. It is noted that there is a challenge in enforcing the terms of this resolution especially in regard to travel sanctions. During a meeting with customs authorities in Chad, the Panel was informed of the lack of proper border control between Chad and the Sudan. It was stated that individuals, including those subject to sanctions, could easily cross the border between Chad and the Sudan owing to a lack of border control. This was further confirmed in a meeting with the Ministry of Justice in N'Djamena.

C. Government of Egypt

50. Egyptian authorities stated that although no specific mechanism had been created for the execution of resolution 1672 (2006), implementation was assured through an information circular distributed by the Ministry of Foreign Affairs to all relevant departments, including the Ministries of Civil Aviation and Justice and the Central Bank, among others. They further stated that according to available information none of those designated for sanctions holds assets in Egypt.

D. Government of the Libyan Arab Jamahiriya

51. During its recent visit to Tripoli, the Panel was informed that through a Cabinet decision the Central Bank of Libya has circulated information to all foreign and national financial institutions in the country ordering the freezing of bank accounts of the designated individuals. An information circular has also been distributed to all border authorities along similar lines. According to information held by the Libyan authorities none of the four designated individuals holds a bank account in the Libyan Arab Jamahiriya or has travelled into the country.

V. Embargo violations by the Government of the Sudan

52. During this reporting period, the Government of the Sudan has continued to exercise its military options in Darfur. It has conducted military operations in the three Darfur States using ground and air forces including offensive military overflights. At times SAF has been supported by and conducted joint operations with pro-Government militias.

53. SAF sustains and resupplies its forces in Darfur through its normal land and air logistics capacity in order to maintain its presence of troops, equipment and air units in Darfur and to enable its forces to conduct military operations. SAF freely

rotates troops and equipment between the three States of Darfur and the rest of the country, by land and by air. As noted in previous Panel reports, the Government uses commercial air cargo companies to transport equipment and troops into Darfur in clear violation of the embargo.

54. SAF has continuously deployed military aviation systems into Darfur during the present mandate. The Panel has received information that SAF personnel have received technical training and assistance outside the Sudan in order to maintain and operate these systems. SAF aviation assets are maintained inside Darfur with spare parts and equipment imported from outside the region and are also rotated out of Darfur to undergo major repairs in maintenance facilities in other parts of the country.

55. Under the terms of paragraph 7 of resolution 1591 (2005), the Government of the Sudan must request the permission of the Committee in order to move embargoed material into any of the three States of Darfur. During the present mandate, the Government has made no application to transport embargoed material into Darfur. The Committee has therefore given no permission for the movement of embargoed material into the region. In spite of this, the Government has not ceased the delivery of military support and equipment, along with weapons and ammunition, to Darfur.

A. Transfer of weapons and ammunition into Darfur

56. In Northern Darfur reliable sources have indicated to the Panel the regular use of Ilyushin 76 and Antonov 12 aircraft by SAF for the transport of light and heavy weaponry into El Fasher. The flights, averaging three daily, reportedly increase to up to five or more per day in advance of expected military engagements. The Panel has witnessed the arrival of a number of these aircraft at El Fasher airport during the present mandate. However, independent examination of the cargo contents by the Panel was made impossible, as the Government habitually suspends all other incoming flights when these aircraft are in evidence; closes access to the airport tarmac to non-Government elements; and reverses military unloading vehicles into the rear of the planes in order to offload the payload, effectively concealing the contents from outside scrutiny. Sources have also described to the Panel as common the Government's practice of conducting evening flights into El Fasher airport. Government regulations until recently officially placed the airport off limits to the United Nations from 1800 hours until 0600 hours. Although this policy has apparently been reversed as of August 2008, the periods of dusk and dawn falling between those hours previously purportedly served as peak times for the import of embargoed material.

57. The Panel was severely hampered by Government restrictions such as those noted above related to airport access. Additional restrictions were placed on the Panel's access to relevant material such as flight logs and to military and other Government personnel, effectively limiting the Panel at times to unacceptably narrow monitoring and investigative parameters determined by the Government of the Sudan.

B. Use in Darfur of military equipment produced after the embargo

58. In early 2008 JEM forces ambushed an SAF convoy travelling northwards on the main road from El Geneina to Kulbus, Western Darfur. General Mohammed Osman, the SAF commander of Western Darfur, told the Panel in an interview on 4 March 2008 that he had received orders to launch an operation to reopen the road, which had been closed owing to JEM activities in the area. General Osman stated that during the ambush JEM had taken 11 prisoners and his convoy had suffered heavy losses with respect to vehicles and the military supplies they were transporting, which included arms and ammunition.

59. JEM representatives have admitted to the Panel that their forces were responsible for this ambush and captured those trucks along with a range of arms, ammunition and supplies. The Panel travelled with JEM into Jebel Moon in Western Darfur to view the material in question. One of two reportedly seized Dongfeng EQ2100E6D trucks was examined by the Panel on this occasion (see photos 1 and 2 below). According to the vehicle's identification plate, it was manufactured in July 2005, meaning that it can only have been brought into Darfur in violation of the arms embargo.

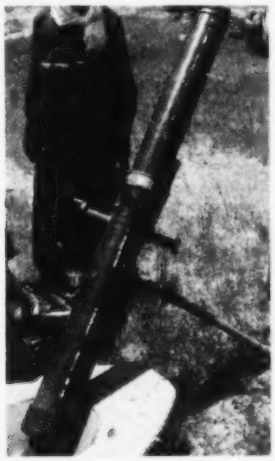
Photo 1
Vehicle identification plate for Dongfeng truck indicating 2005 date of manufacture

Photo 2
Dongfeng truck examined by Panel in Jebel Moon, 21 August 2008

60. JEM stated that the captured equipment included a 120mm mortar. The Panel examined the piece and found that it too was of 2005 production (see photos 3 and 4 below). It was accompanied by other assorted weaponry including 82mm and 120mm mortar rounds, heavy machine guns and 7.62x54mm and 14.5mm ammunition.

Photo 3
Identification tag on 120mm mortar indicating 2005 production date

Photo 4
120mm mortar observed by the Panel in possession of JEM



61. As the arms embargo was extended to all the parties to the N'Djamena Ceasefire Agreement and any other belligerents in the three states of Darfur in March of 2005 (Security Council resolution 1591 (2005), para. 7), both the military vehicles and materials were brought into Darfur in violation of the terms of the arms embargo.

62. In August 2008 the Panel approached the SAF Western Military Command with this information and photographs of the truck in question in order to seek clarification. The commander of the Western Military Region categorically denied that that type of truck was in service with SAF and alleged that JEM must have received it from the Government of Chad as opposed to seizing it in the ambush. Accordingly, when the Panel requested that SAF check the chassis number of the Dongfeng truck against its own records, SAF refused, saying that it would be a pointless exercise given the impossibility of that type of vehicle being of SAF provenance.

63. The Panel has seen this type of vehicle frequently in service with SAF during its travels in Darfur, including both in El Fasher and El Geneina. Two of the trucks in question are pictured below (see photo 5) being used by SAF troops to unload military supplies from an aircraft of the Azza Transport Company in El Geneina in March 2008.

Photo 5
SAF Dongfeng trucks unloading military supplies from an Azza Transport aircraft, El Geneina, March 2008

64. The Panel previously reported a delivery of 212 Dongfeng EQ2100E6D trucks into Port Sudan on behalf of SAF in its report of January 2006 (S/2006/65). Owing to a lack of response to its requests for information on this subject, the Panel is unable to conclusively state that the truck it examined forms part of that shipment. Even so, the Panel remains unsatisfied with the Government's explanation as to the arrival of post-embargo production military vehicles into Darfur and their denial of use of this type of military equipment in the region.

VI. Aviation assets, air rotation and delivery of equipment

65. In line with previous practice, the Panel has continued its monitoring of aviation assets in Darfur. During the reporting period the Government of the Sudan has deployed, maintained and resupplied its military aviation assets in Darfur. The Government has also deployed troops and equipment into the region by commercial aircraft.

66. In meetings with the SAF command in Khartoum and the Western Military Command for the three Darfur States, the Panel asked SAF representatives whether and how the United Nations arms embargo had affected their military movements and operations in Darfur. While openly admitting to rotating troops and equipment within and between Darfur and the rest of the Sudan, the Government officials stated that those rotations did not violate the provision of the arms embargo. Regarding the import of weapons and ammunition into Darfur, which would constitute a violation of the arms embargo, the officials stated that there was little need as their stores pre-existing the imposition of the embargo were sufficient and required little if any resupply.

Azza Transport

67. The Panel has witnessed aircraft belonging to the airfreight company Azza Transport operating on behalf of the Government of the Sudan in violation of the embargo. Mentioned in previous Panel reports for similar activities, Azza Transport is a commercial company which, according to the Panel's research findings, operates a significant percentage of its flights for the Sudanese armed forces and security services. The Panel regularly observed Azza aircraft, seemingly under SAF charter, transporting military personnel, supplies and equipment into Darfur. This has often included what appear to be arms and ammunition.

68. During a meeting held with the Panel, Azza management admitted to having successfully bid on a transport contract for SAF, renewable on a yearly basis. Azza stated that it only made commercial shipments and that the long-term SAF contract included supply flights to Western Darfur carrying foodstuffs, equipment and vehicles.

Photo 6
Azza Transport aircraft delivering military supplies to El Fasher airport, 30 August 2008

69. Azza refused to go any further into the specific details of its contracts with SAF. The company stated instead that permission would have to be obtained from the Government regulatory body, the Civil Aviation Authority, in order for Azza to release any information pertaining to its operations and cargo consignments. This stated procedural requirement is illogical given that Azza is a commercial company and asserts that its shipments into Darfur are of only commercial nature. Regardless, all further attempts by the Panel both in writing and verbally to obtain even the most basic of information (i.e., copies of corporate registration, fleet descriptions) from Azza met with no response.

70. While denying that its aircraft transported weapons and ammunition into Darfur, Azza did accept complete responsibility for all aspects of the consignments it conveys into the region. It stated that it had self-handling rights at all airports where it operated, including pre-departure cargo content verification, inspections, and clearances. This eliminates the possibility that Azza could be ignorant of the fact that its aircraft are being used to transport cargo in violation of the embargo.

A. Delivery of "technical" vehicles

71. The most common form of military or paramilitary vehicle used in Darfur by Government and rebel forces alike is a 4x4 pickup with the cab removed and heavy weaponry fitted to the pickup bed, such as a 12.7mm or 14.5mm machine gun, a 23mm or 14.5mm anti-aircraft gun or a 107mm multiple-barrel rocket launcher. This is often supported by a 7.62mm front-mounted light machine gun operated from the passenger seat. These "technical" vehicles, invariably Toyota Buffalo or Land Cruiser type 4x4 pickups, typically transport 10 soldiers armed with personal light weapons, supplies and equipment in addition to the main armament of the vehicle.

Photo 7
"Technical" vehicle with cab removed

72. As during previous mandates of the Panel, the Government of the Sudan has continued to deploy such vehicles into Darfur. Deliveries are made by land and air, and in the latter case are fitted with their armament after arrival. In Western Darfur, the State subject to the most intensive fighting during this mandate period, the Government has used Antonov 74 aircraft to deploy these assets. In spite of the refusal by the Government to provide detailed air traffic information at the request of the Panel, reliable information has been received indicating that these aircraft have been making up to three rotations per day to El Geneina airport since the beginning of the year.

Photo 8
Vehicle and equipment delivery to El Geneina airport, 3 March 2008

73. The Panel itself observed rotations of these aircraft and deliveries of new Toyota 4x4 pickups. Between 2 and 5 March 2008 an Antonov 74 with the registration number "ST-GFF" was frequently observed landing and discharging its cargo at El Geneina airport. Upon each landing the aircraft delivered two Toyota pickups along with military personnel and was received at the airport by Sudanese police and military officers.

74. On one occasion in particular, the Panel observed the delivery of brand-new vehicles from which the plastic film protecting the paintwork had not yet been removed. The Panel followed these vehicles from the airport and witnessed their delivery to military and intelligence offices in the centre of El Geneina. In June, an Antonov 74 with the registration number "ST-BDT" was observed conducting similar activities in El Geneina. Both aircraft are presently operated on behalf of the Government of the Sudan by the Sudanese company Green Flag.

Green Flag Aviation Co. Ltd.

75. The Panel has been able to obtain copies of corporate registrations for Green Flag Aviation Co. Ltd. Although registered as a private entity, this company has close ties to Sudanese civilian and military governmental structures. One member of the Civil Aviation Authority is a 40 per cent shareholder and sits on the Board of Directors, while two Air Force members also serve on the Board of Directors. According to the official registry, the shareholders and Board members of Green Flag are as follows:

Name	*Affiliation*	*Shares*
Shareholders		
Ahmed Satti Abdurahman Bagori	Executive Manager of Green Flag	600
Ali al-Nassih al-Kala	Civil Aviation Authority	400
Members of the Board of Directors		
Mohamed Kheir Omar al-Awad	Kadera Company for Trade Services	
Ahmed Satti Abdurahman Bagori	Green Flag	
Ali al-Nassih al-Kala	Civil Aviation Authority	
Ahmed Abdelrazeg	Air Force	
Aissa Bakhit Idriss	Air Force	

Source: Document issued on 8 June 2007 according to stamp of Ministry of Justice.

Recommendations

76. **Given available evidence and admissions from SAF that (a) the Government of the Sudan freely rotates troops and equipment between the three States of Darfur and the rest of the country and sustains and resupplies its forces in Darfur through its air logistics capacity, and that (b) SAF contracts commercial airfreight companies for the regular transport (by regular-use Ilyushin 76, Antonov 12 and Antonov 74 aircraft) of light and heavy weaponry and large numbers of 4x4 military vehicles into Darfur in violation of the embargo, the Panel recommends that the Committee request the Government of the Sudan:**

(a) **To comply with its obligation to request and receive permission from the Committee before any military aircraft are moved into Darfur;**

(b) **To allow UNAMID monitoring teams to be installed at all airports in Darfur with authority to conduct spot checks on any aircraft suspected of operating in violation of the arms embargo;**

(c) **To allow UNAMID and the Panel unhindered access to Khartoum airport and all airports across Darfur at all times without prior notification;**

(d) **To give clear instructions to all Government personnel not to harass or obstruct UNAMID personnel or Panel members when collecting evidence, including photographic evidence, of possible arms embargo violations at airports anywhere in Darfur;**

(e) **To provide clear instructions to relevant military and civilian personnel to allow the Panel of Experts access to all aviation information it may require for its work, including air traffic sheets and aircraft movement and maintenance information for all civilian and military aircraft operating in and out of Darfur;**

(f) To request the Civil Aviation Authority at the end of each month to provide the Panel with full aircraft movement details from the airports in all three States of Darfur;

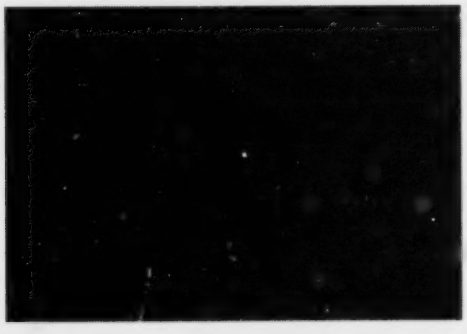
(g) To provide the Panel with complete details of all military, police and intelligence aircraft currently deployed and used in Darfur.

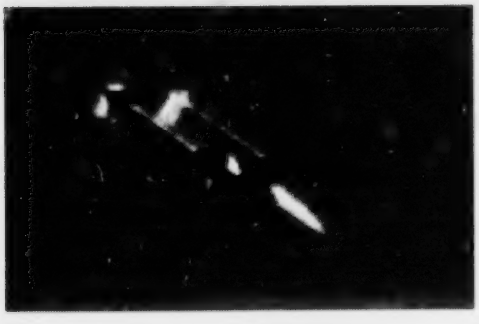
B. Unmanned aerial vehicles

77. During the present mandate, the Panel was informed by reliable sources of a new addition to the aerial military capacities of the Government of the Sudan in Darfur. The allegation was that the Government, continuing a practice of blatant embargo violations, had imported three to five unmanned aerial vehicles into its store of military aviation equipment in Darfur. The sources further stated that the vehicles, together with a control vehicle and SAF specialist personnel allegedly trained overseas, of a new military unit within the Western Military Command.

78. Witnessed in the skies over El Fasher by a range of United Nations and non-United Nations personnel since May 2008, the vehicle in question had in fact become such a regular sight by July that the local population nicknamed it after a local insect because of the particular buzzing sound it made when deployed.

Photos 9 and 10
Unmanned aerial vehicle observed in operation over El Fasher, 30 August 2008





79. Upon conducting an independent investigation into the matter, the Panel was able to confirm the deployment of unmanned aerial vehicles in Darfur and witnessed for itself at least one such vehicle in operation during an August visit to El Fasher (see photos 9 and 10). It was also noted by Panel members that additional hangars had been constructed within the military section of El Fasher airport to house the new military hardware, complete with a suspected control vehicle. Witnesses interviewed by the Panel during this period allege that the Government has deployed unmanned aerial vehicles not only to El Fasher but to SAF forces based in El Geneina and Nyala.

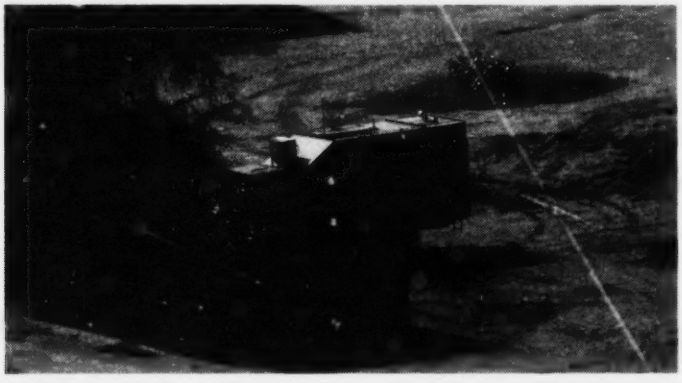
80. The Panel met with the commander of the Western Military Region in August 2008. He confirmed deployment of unmanned aerial vehicles only to El Fasher as of May 2008 and stated that they were used principally to conduct security operations in the area.

81. At a subsequent meeting with the SAF military chiefs of staff at their headquarters in Khartoum, when the Panel requested further information on the deployment of these aircraft, it received a range of answers. The first response was that no such vehicle existed on Sudanese territory. The second answer, given mere seconds later, was that the unmanned aerial vehicle did indeed exist but that it did not belong to SAF, as the Government of the Sudan could see no possible use for such a vehicle. The third response was that the vehicles in question were owned and operated by unspecified non-governmental organizations for the purpose of locust control.

82. In accordance with the International Convention on Civil Aviation, all civil aircraft operating in the airspace of a contracting State must be registered in the national civil aviation registry. Regulatory procedures dictate that national civil aviation authorities issue certificates of registration for all civilian-held aircraft within national airspace. These certificates list all ownership, manufacture and registration details for the aircraft in question in addition to its primary function or nature of operation (i.e. training, commercial, agricultural or private).

83. The Panel held a meeting with the Sudanese Civil Aviation Authority and requested details of all unmanned aerial vehicles listed on the register of civilian aircraft allowed to operate in the Sudan. In a written response the Authority stated that all commercial aviation companies in the Sudan, in accordance with applicable civil aviation regulations, are obliged to register any and all aircraft operating in Sudanese airspace. The letter further states that no commercial company has registered any unmanned aerial vehicles in the national civil aviation register.

Photo 11
New hangar constructed and suspected unmanned aerial vehicle control vehicle, El Fasher airport, 11 August 2008



Recommendation

84. **The deployment of unmanned aerial vehicles into Darfur by the Government of the Sudan is a clear-cut violation of paragraph 7 of resolution 1591 (2005). Accordingly, the Government of the Sudan should be required to immediately cease and desist the use of this equipment and ensure the removal from the region of all unmanned aerial vehicles and other associated post-embargo military equipment.**

C. Maintenance and rotation of fixed and rotary wing SAF aircraft

85. In an interview with the Panel, the Region commander of the Western Military stated that SAF aircraft upkeep is conducted mainly inside of Darfur. These aircraft are also regularly rotated out of Darfur for maintenance. The high levels of activity of these aircraft necessitate frequent replacement and maintenance. New spare parts and engines can only be sourced from outside of Darfur.

86. The Panel sought additional information on this subject from SAF military commanders in the Khartoum headquarters. They explained that while minor maintenance on fixed and rotary wing SAF aircraft based within Darfur is done at their respective bases, major airframe and engine maintenance can only be performed in licensed facilities outside of Darfur. Major maintenance is done on SAF fixed and rotary wing military aircraft every 800 to 1,000 flight hours (or roughly every three months). The return of these aircraft to Darfur following major maintenance and the import of spare parts for the maintenance of other Government aircraft is a clear violation of paragraph 8 of resolution 1556 (2004).

Photo 12
Engine replacement being conducted on an Mi-24 at El Geneina airport, 21 August 2008

87. In its previous report (S/2007/584, para. 84), the Panel recorded Fantan A-5 aircraft as having been deployed in Nyala. In the present reporting period aircraft of this type have been seen receiving maintenance in Nyala airport. They appear to be different aircraft from those deployed in the past in Nyala, as the aircraft bearing registration Nos. 407 and 482 have replaced those numbered 402, 403 and 410.

88. SAF Antonov aircraft have been observed receiving maintenance in Darfur. The Panel is aware that for these aircraft to continue flying, more comprehensive airframe maintenance is necessary. This type of maintenance is unavailable in Darfur but is carried out at the only accredited Antonov maintenance facility in the Sudan, which is run by Azza Transport in Khartoum.

D. SAF white aircraft

89. In all of its reports to date the Panel has recorded the ongoing use of white aircraft in Darfur by SAF. The Panel continued to observe such activities, involving both rotary and fixed-wing aircraft, during the present mandate.

Mi-171 helicopters

90. Early in 2007 the Panel observed two white Mi-171 helicopters in Darfur with tail numbers 528 and 533 (see S/2007/584, para. 211). The aircraft 528, pictured in photos 13 and 14 below, has been observed flying out of El Fasher airport on multiple occasions throughout 2008. This aircraft is crewed by military pilots; almost exclusively carries military cargo and personnel; and is serviced, loaded and protected by SAF military staff in the same way as other military aircraft. A similar aircraft numbered 529 has also been reported to the Panel. SAF-operated white helicopters have been observed throughout the three States of Darfur, flying over both Government and rebel-held territory and United Nations bases.

91. White Mi-171 helicopters operated by SAF are almost identical to white United Nations Mi-8 helicopters. The use of these SAF helicopters has resulted in the targeting of United Nations aircraft by armed groups opposed to the Government of the Sudan. This security threat is compounded by the intimidation of United Nations helicopters by SAF personnel, who have repeatedly restricted the movement of United Nations peacekeeping and humanitarian helicopters. On occasion this has even extended to threats to shoot down United Nations aircraft for alleged airspace, flight timing or security infractions. United Nations aircraft in Darfur are now clearly vulnerable to military threats from both SAF and rebel groups.

92. The Panel gained first-hand knowledge of this threat on 11 August 2008, when a white United Nations Mi-8 helicopter transporting the Panel to the Jebel Moon area of Darfur for a verification mission was targeted and fired upon by JEM combatants. Subsequent communications with JEM on the issue revealed that the combatants on the ground had mistaken the United Nations aircraft for a Government white helicopter and as such perceived it to be a viable military target. Another United Nations Mi-8 helicopter was also targeted and fired upon that same afternoon in Western Darfur for identical reasons. On 14 September, yet another United Nations helicopter was targeted in Darfur. None of these attacks resulted in casualties.

93. The Panel has witnessed armed groups in possession of significant military anti-aircraft capacity, including anti-aircraft guns and surface-to-air missiles. It may only be a matter of time before the purported inability to distinguish between United Nations and SAF helicopters results in more deadly consequences for United Nations staff and humanitarian operations.

Photo 13
White Mi-171 helicopter at El Fasher airport

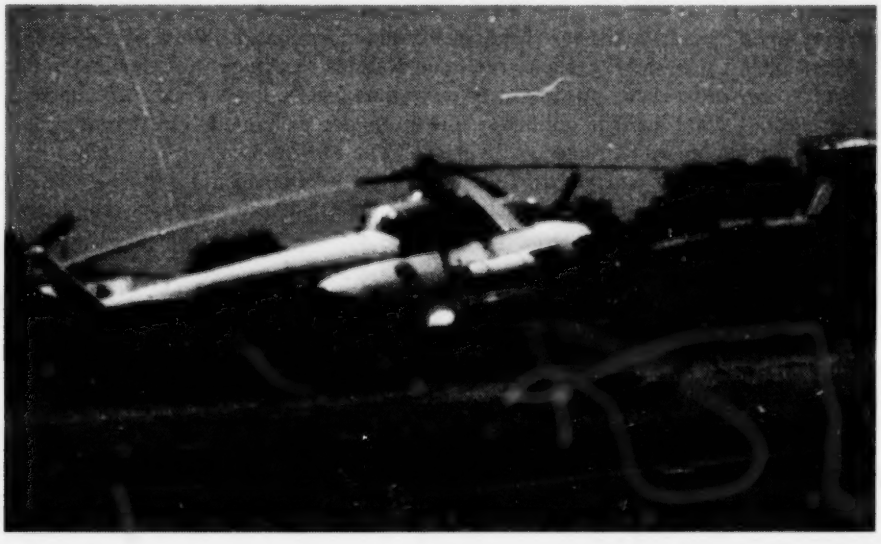


Photo 14
White Mi-171 helicopter on military apron at El Fasher airport

94. The Panel brought this to the attention of the commander of the Western Military Region in El Fasher and its military interlocutors at the SAF headquarters in Khartoum. These officers stated that they used such aircraft for the transport of delegations around Darfur in the same way as any private company or non-governmental organization might rent a white helicopter and use it in Darfur. They further stated that although their helicopters might be white, none of them carried United Nations markings. The Panel can confirm that the white helicopters it has seen operated by SAF carried no United Nations markings. Nor, however, did they carry any other distinguishing markings apart from a three-figure tail number. These aircraft carry neither civilian registration nor a painted Sudanese flag as normally found on camouflage SAF Mi-24s. The Government of the Sudan has provided no satisfactory explanation for this apparent penchant for ensuring that its white helicopters remain completely bare of elements identifying them as military aircraft.

E. Offensive military overflights

95. In line with past practice the Panel continues to define as offensive military overflights acts falling within the following categories:

(a) Disproportionate use of aircraft beyond that which is required to neutralize a clear and imminent threat;

(b) Unprovoked attack with aircraft, such as strafing or indiscriminate bombardment of civilian targets;

(c) Use of aircraft in support of ground operations preparing for or engaging in an attack;

(d) Retaliatory attack, i.e. action in response to a prior attack;

(e) Flights that deposit troops for participation in an attack;

(f) Operation of aircraft in such a manner to intimidate, frighten or harass; for example, flying mock attack runs, circling over an area for a considerable period of time, destroying buildings with rotor wash, generating sonic booms, etc.

1. Antonov-26 aeroplanes

96. SAF military Antonovs also continue to operate in Darfur in a military support role. Antonov-26 aircraft with the tail numbers 7705, 7710 and 7777 have been observed by the Panel at the Nyala, El Fasher and El Geneina airports throughout the 2008 mandate. These aircraft are mainly white and carry no identifiable military markings apart from their tail numbers and are operated and serviced by SAF personnel. Seen by the Panel typically parked beside military supply dumps, it is these aircraft that are suspected of carrying out Government bombing of areas throughout Darfur.

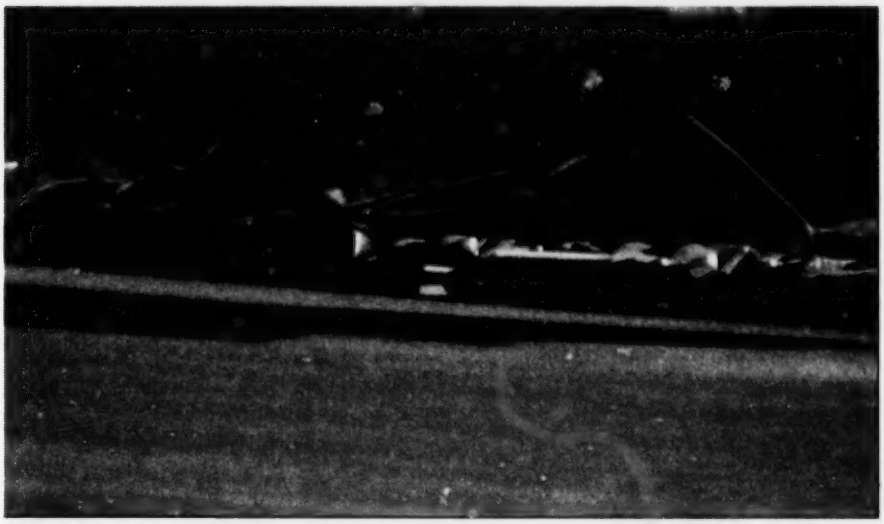
Photo 15
White Antonov-26 with registration number 7777 and white Government helicopter with registration number 528 in El Fasher, July 2008

97. The Government of the Sudan throughout this mandate has consistently denied that it uses aircraft in an offensive capacity in Darfur. SAF officers have admitted only the use of Mi-24 attack helicopters in close support of their ground troops while conducting military operations. SAF military white Antonov aircraft and its Fantan A-5 fighter jets based in Nyala are said to be used only in a reconnaissance capacity and never for bombings or attacks. SAF states that security threats in Darfur are increasingly a product of bandits and criminals and that the use of

aircraft in an attack role would not be appropriate to deal with a threat of such a minor nature.

98. On numerous occasions during the present mandate, civilians living in Darfur and rebel groups operating there claimed to have been attacked by or witnessed Government white Antonov aircraft flying in an offensive bombing role beyond that acknowledged by SAF. SAF aircraft in El Geneina, Nyala and El Fasher are all located near supplies of air-to-ground rockets, spare rocket pods or stocks of bombs. At El Fasher airport, for example, white Antonov aircraft park next to a military supply dump covered by tarpaulins and protected by SAF personnel (see photo 16 below). On occasions when these supplies have been uncovered the Panel has clearly seen that they include bombs.

Photo 16
Military supply dump including bombs at El Fasher airport, 12 March 2008



99. The Panel has received numerous reports of bombing executed by SAF forces throughout Darfur. The Panel undertook a number of verification missions to areas of alleged bombings and attacks as soon as feasible after the events were said to have taken place. The sites selected by the Panel for visits were all sites of recently alleged bombings and were distributed among different areas of Darfur and under the control of different armed groups. Accordingly, they are considered to be suitably representative of the larger and more widely reported occurrences. The witnesses interviewed were from a broad spectrum of the local populations. The areas of alleged bombings are all notable for similarities between the craters and blast damage found, bomb design and the witness statements. There are also significant similarities between the shrapnel remnants and unexploded ordnance examined by the Panel and the bombs it saw stored next to SAF aircraft in Darfur.

2. Verification mission to Jebel Marra

100. On 14 August 2008 the Panel travelled to the village of Umu on a verification mission related to allegations of Government bombing of civilian areas in the area during the month of July 2008. Umu, a highly fertile agricultural area, sits in the mountainous Jebel Marra region of Western Darfur.

101. The Panel was informed upon arrival that the nearby villages of Dobo and Barkandia had been bombed in recent days, and the neighbouring village of Wadi Doro had been bombed on 13 August 2008, the day immediately before the mission's arrival.

Situation summary

102. Witness statements gathered by the Panel describe the use of an Antonov aircraft in the bombing of Umu which occurred on 20 July 2008. Of the 8 to 10 sites in and around Umu, the mission viewed six bomb craters and can confirm their having been produced by exploding ordnance. Shrapnel from the bombs used in the attack was scattered all over the village, as were various pieces of the scrap metal packed inside them in order to magnify potential casualties.

103. The size of the bombs used in the attack is estimated at 115 kilograms. The bombing footprint identified by the Panel indicated a west to east attack vector with bombs hitting approximately 10 metres apart between the first and second impact points, 50 to 60 metres between the second and third impact points, 20 to 30 metres between the third and fourth impact points, 20 to 30 metres between the fifth and sixth impact points and 20-30 metres between the fifth and sixth impact points. The craters examined by the Panel ranged from approximately 3 to 3.6 metres in diameter.

Impact of the bombing

104. According to local reports the bombing killed six people and injured four (one of these a four-year-old girl), all as a result of shrapnel and the haphazard yet deadly flight of metal pieces placed inside the ordnance. Secondary effects described by villagers included respiratory problems immediately following the bombing and illness resulting from villagers using the metal bomb fragments to construct eating utensils.

105. The bombing resulted in damage to several dwellings, the local clinic and the village water pump, thus depriving the community of its sole source of potable water. The nearest water source for the village is now the village of Daya, some 10 to 20 km away. Humanitarian aid from United Nations and other agencies has disappeared since the bombing and at the time of the Panel's visit, the community was suffering from shortages of food and medicine. According to residents of Umu, Antonovs continue to fly regularly over the village, most often during the morning hours, terrifying the population.

Photo 17
Water pump made inoperable by bomb shrapnel

Presence of armed opposition groups

106. The region technically falls under the control of the SLA-Unity movement. The sector commander when interviewed by the Panel claimed to have had no military presence in Umu during the period of the bombing. The Panel was unable to either corroborate or refute the veracity of this statement.

Photo 18
Bomb crater, Jebel Marra, 14 August 2008

3. Verification mission to Jebel Moon

107. On 21 August 2008 the Panel visited two villages during a verification mission related to allegations of Government bombing of civilian areas in July 2008. Both villages are located in the semi-mountainous region of Jebel Moon, Western Darfur.

Situation summary

108. Witness statements gathered by the Panel describe an Antonov aircraft circling the area twice on 18 July 2008, before executing several bombing runs that saw the release of over 18 bombs with impact points occurring at roughly 10- to 15-metres intervals, in and around the villages, resulting in three deaths and two injuries.

109. The Panel spent an extensive period visiting multiple bomb sites and positively confirmed the execution of widespread aerial bombardment of the areas. The Panel examined six bomb craters, all approximately 3 to 3.6 metres in diameter. The ordnance employed during the attack in both areas is estimated to be of approximately 115 kilograms.

110. In the village of Saraf, one witness the Panel spoke with described the death of his father, who was hit by a bomb fragment in his home and killed instantly. Local residents also brought a baby girl to the Panel who was wounded by the impact of shrapnel. One interlocutor stated that parts of the shrapnel were still inside the child's body but could not be removed owing to a lack of access to medical facilities. Residents reported that on the same day the nearby village of Al Loona had also been bombed, resulting in injuries to a 9-year-old girl and a 35-year-old woman.

Observations and findings

111. Local witnesses delivered credible statements relating to the 18 July bombings and their statements were backed up by technical evidence documented and retrieved on site.

112. Bombing of these areas amounts to a violation of paragraph 6 of resolution 1591 (2005) regarding offensive military overflights and several rules of international humanitarian law. These include (a) the obligation to make a distinction between combatants and civilians and to protect civilians, notably against violence to life and person; (b) the prohibition on deliberate attacks on civilians; (c) the prohibition on indiscriminate attacks on civilians, even if there may be armed elements among them; (d) the prohibition on attacks aimed at terrorizing civilians; and (e) the prohibition on attacks against civilian objects.

Presence of armed opposition groups

113. The region falls under the control of JEM. The sector commander, when interviewed by the Panel, stated that only civilians inhabited the bombarded area; JEM had only a limited or sporadic presence. The Panel was unable to either corroborate or refute the veracity of this statement.

4. Bomb analysis

114. From its own verification missions and information provided by other actors who have visited sites of alleged bombings, a number of consistent traits have been found that are common to these attack sites.

115. The craters viewed by the Panel range in size from 3 to 3.6 metres in diameter depending on the density of the ground. Shrapnel and remnants of bombs collected from all the sites shows significant similarities between the type of bombs being used. The bombs in each case appear to be locally fabricated or modified and are made of a section of 1.5-cm-thick metal pipe 25 cm in diameter and 50 cm long. A circular metal plate of the same thickness and diameter is welded to the rear of the tube, to which is further attached a mild steel fin assembly. The faceplate of the bomb is fabricated with a flat circular plate of the same material as the rest of the casing with a circular hole cut into it for an impact fuse in the nose. The fragmentation effect of the case material is augmented by the addition of 50-cm lengths of concrete reinforcing bar as shrapnel, tack welded around the interior of the casing. Upon detonation the case is shown to fragment into irregular pieces, while the reinforcing bars remain intact and have proven to cause significant shrapnel damage to any object nearby the point of detonation.

Photo 19
Bomb casing from site of partial detonation showing additional shrapnel fitting inside, Jebel Moon, 21 August 2008

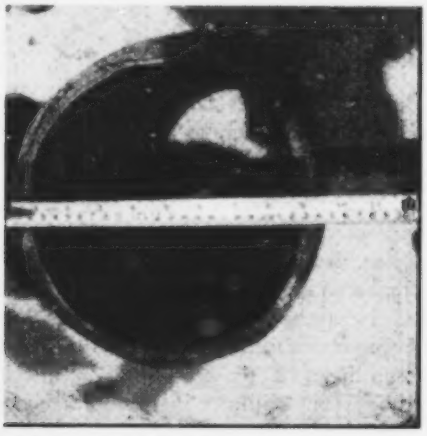


Photo 20
Circular face plate from bomb along with pieces of scrap metal packed inside in order to magnify potential casualties, Jebel Moon, 21 August 2008

116. Commercially produced bombs with local modifications have also been discovered in Darfur during the present mandate period. Although unexploded ordnance of this type is discovered less frequently, the bomb shown in photos 21 and 22 below was discovered in a village in mid-2008.

Photos 21 and 22
Commercially produced bomb with local modifications discovered in Darfur in 2008

117. The Panel presented photographs of the bomb sites, craters, unexploded ordnance, shrapnel and blast damage to the Western Military Command in El Fasher and SAF superiors in Khartoum. In both cases the SAF representatives categorical denials that these were the result of SAF offensive military overflights. Furthermore, they stated that SAF had never conducted bombings in Darfur at any time. SAF accuses the rebel movements in Darfur of producing fake bomb sites and moving old unexploded ordnance and shrapnel around Darfur to show to members of the international community in order to discredit the Government. This faked material was said to have come from neighbouring countries, previous conflicts in the region or the Second World War. These explanations and assertions by SAF are inconsistent with the body of evidence collected by the Panel on this subject.

5. Recommendations

118. **The Panel of experts recommends:**

(a) **That all Sudanese military air assets deployed in violation of the arms embargo and those deployed prior to the imposition of the arms embargo and currently used for offensive military overflights be withdrawn from Darfur with immediate effect. This would include all Mi-24 attack helicopters, intelligence aviation assets, Fantan A-5 jet aircraft and military Antonovs currently deployed in Darfur;**

(b) **That all white aircraft operated by the security structures of the Government of the Sudan and flying on behalf of the military be clearly painted in a colour other than white and marked in such a way that there can be no confusion made between them and United Nations aircraft. This includes Antonov and Mi-8 and MI-171 helicopters;**

(c) **UNAMID monitoring teams should be put in place and given the capacity to conduct verification missions into areas suspected of being affected by offensive military overflights in violation of resolutions 1556 (2004) and 1591 (2005).**

VII. Case study: Western Darfur attacks of February 2008

119. Between 7 January and 22 February 2008, SAF and pro-Government Arab militias attacked several locations in the area north of El Geneina, Western Darfur. The towns and locations affected include Abu Sarough (8 February), Saraf Jidad (7, 12 and 24 January), Silea (8 February), Sirba (8 February) and several locations in the area of Jebel Moon (18, 19 and 22 February). Around 115 people were killed during the attacks, including women, elderly and children.

120. The attacks were most prominently reported on by OHCHR.[5] The Panel raised the widespread accusations of large-scale violations of international humanitarian law with the military leadership in Western Darfur, the Western Military Command in El Fasher and the military leadership in Khartoum. In essence the representatives of the military stated that the allegations were exaggerated, that SAF did not make use of armed pro-Government militias and that JEM fighters were responsible for the large-scale damage inflicted on civilians in the area. The Panel decided to

[5] Ninth periodic report on the situation of human rights in the Sudan, 20 March 2008.

conduct its own full-scale investigation into the attacks. Panel members visited one of the attacked locations and interviewed numerous witnesses in Darfur and in Kunungu refugee camp in eastern Chad. Moreover the Panel conducted confidential interviews with Government insiders.

A. Applicable rules of international humanitarian law

121. For the purpose of the present report the Panel restricts its legal elaborations to the most essential rules as they can be found in treaty[6] and customary law. These rules include: (a) the obligation to differentiate between combatants and non-combatants, to ensure that incidental loss to civilians is not disproportionate and to take precautions in order to minimize loss of civilians; and (b) the prohibition on acts of violence directed at civilians, torture, rape, pillage, indiscriminate attacks, attacks on civilian objects and attacks on humanitarian organizations.

122. Moreover, the Rome Statute of the International Criminal Court defines certain breaches of international humanitarian law as war crimes, crimes against humanity or genocide.

B. The northern corridor

123. The area of the attacks, commonly referred to by the international community as the "northern corridor", is a stretch of land in Western Darfur reaching from El Geneina to the town of Kulbus. The mountainous area of Jebel Moon is located adjacent to the northern corridor.

124. According to the Office for the Coordination of Humanitarian Affairs (press release of 18 February 2008), the total number of people in the region is at 160,000, of whom 57,000 were displaced by the offensive. The majority of the area's inhabitants belong to non-Arab tribes, including the Erenga (mainly in Sirba, Abu Sarough, Bir Dagig and Kondobe) and the Messeriya Jebel (Jebel Moon area). Tribes of Arab origin comprise, among others, the Awlad Eid, Shegeirat, Awlad Zeid, Awlad Ghanem, Awlad Ereigat and Awlad Kleib. Arab tribes, in particular, include groups that pursue a nomadic or semi-nomadic way of life.

C. Individual case studies

1. Sirba

125. According to witness statements, on 8 February 2008 at roughly 9 a.m. an unidentified white Antonov aircraft and a green helicopter approached Sirba from the north. Both allegedly circled the town for some time before departing. The Antonov later returned to the area and was observed dropping an unspecified number of bombs over a location to the south of the town. This resulted in no casualties. At around 10 a.m. a large group of armed men referred to by witnesses as "Janjaweed" began an attack on Sirba. The attackers used horses, camels and up to

[6] The four Geneva Conventions of 1949; as regards rules of non-international armed conflict, common article 3 of the four Geneva Conventions and Additional Protocol II to the four Geneva Conventions.

40 open Land Cruisers mounted with heavy machine guns. The attackers were clad in a mix of khaki and camouflage coloured uniform-style attire. After first surrounding the town, they entered the central market area where they began indiscriminate killing, looting and destruction of civilian premises. The attackers further set alight local shops and destroyed market stalls in the centre of town. One of the residents shot and killed was the *Oumda* (traditional leader). He was killed at his home together with three elders who had come to see him for their regular consultations. The attackers carted goods from the scene and credible reports suggest that SAF troops arriving approximately 30 minutes into the assault did nothing to prevent it from continuing. At approximately 3 p.m., five hours after the start of the attack, SAF troops deployed into Sirba with air support provided by one Antonov and two helicopters. The majority of the attackers departed while some purportedly remained behind and patrolled areas of the town.

126. According to figures from the Office for the Coordination of Humanitarian Affairs, almost half of Sirba's population fled to Chad. Reports and witness accounts suggest that up to 45 people, among them women and children, were killed during the attack and up to half the town's houses and other premises were burned down. The Panel was able to confirm large-scale destruction caused by burning in the market area and other parts of town during a visit to Sirba on 3 March 2008.

Photo 23
Aerial view of a part of Sirba burned to the ground, 3 March 2008

127. Following the attack, the Government of the Sudan deployed Central Reserve Police (CRP) forces in town with instructions to protect the civilian population. However, local residents reported to the Panel cases of harassment and beatings committed by CRP. There are strong indications that from the day of the attack uniformed men who reportedly include members of SAF as well as CRP have committed numerous acts of sexual violence and rape. Local residents reported to the Panel that they still felt intimidated and threatened by the continued presence of Arab militias in the immediate vicinity of the town.

2. Silea

128. On 8 February 2008 between 3 p.m. and 4 p.m., according to multiple witnesses, a white Antonov circled over Silea, accompanied by two green army helicopters. The Antonov dropped at least two bombs over the town, one close to a school in the eastern part and another one close to a mosque in the western part of town. One of the bombs killed seven women and several children. The Panel spoke with an eyewitness who assisted in burying their bodies. The ground attack that followed was very similar to the one in Sirba. Hundreds of armed militiamen led the assault on pickup vehicles, horses and camels. They indiscriminately shot at and killed civilians and looted houses. Among the civilians killed was an employee of an international non-governmental organization, who was shot within the premises of the organization. The attackers also looted the offices of international organizations. The Panel conducted witness interviews as to the details of the attack. Almost all of Silea's population, apart from some 250 elderly people, women and children, fled the town and its environs towards Birak in Chad.

3. Abu Sarough

129. On the morning of 8 February at around 8:30 a.m. armed militiamen referred to by witnesses as "Janjaweed" entered and surrounded the town. They came on horses and on camels and a few vehicles. They were dressed in mixed uniform-style clothes in khaki and camouflage colours. An eyewitness reported to the Panel that one white Antonov and two camouflage helicopters circled over the area and dropped an unspecified number of bombs. Eyewitness accounts did not report any casualties as a direct result of the bombing. Approximately 30 individuals were killed during the attack, including elderly, children and disabled. The attackers also looted and set fire to civilian premises and stole livestock, food stocks and crops. The premises of an international non-governmental organization and its medical centre were reportedly looted and two of the organization's vehicles stolen. In a written statement submitted to the Panel, several local community representatives stated that during part of the attack SAF troops were present on the ground. Other reports suggest that SAF troops participated in the looting and pillaging of the town. The attacks resulted in the majority of the inhabitants fleeing to Chad or to the area of Jebel Moon.

4. Jebel Moon and surrounding areas

130. According to reliable sources, SAF carried out attacks, jointly with Arab militias and alone, in Jebel Moon and surrounding areas between 18 and 22 February 2008. The Panel interviewed an eyewitness in eastern Chad who saw an Antonov aircraft dropping an unspecified number of bombs close to the displaced persons camp of Abu Sharow. The village of Goz Minu, near Jebel Moon, was

reportedly attacked by SAF troops during the same period. Witnesses state that SAF soldiers approached Goz Minu with an estimated 22 vehicles and set many houses on fire. They destroyed food stocks and crops that local residents had stored. Owing to the unstable security situation the Panel was not able to visit this area to collect further evidence.

5. Saraf Jidad

131. Saraf Jidad is situated approximately 50 kilometres north-west of El Geneina. Available information suggests that it was attacked several times by militia groups, namely on 7, 12 and 24 January 2008. Logistical and time constraints prevented the Panel from carrying out its own investigation in the area to corroborate this information. Credible reports and sources suggest that the attacks on Saraf Jidad were carried out in a similar fashion to the ones referred to above. The main attack of 24 January was preceded by an exchange of fire with JEM forces in the surroundings of Saraf Jidad. The attackers were dressed in mixed uniform-style clothes and approached on horses, camels and military-style vehicles. They entered the village and looted shops, burned down houses, destroyed food stocks and agricultural equipment. The local clinic was pillaged. Reportedly 24 civilians were killed including the *Oumda*. Approximately 50 per cent of the village was burned down and, according to the Office for the Coordination of Humanitarian Affairs, half the local population fled.

D. Observations and analysis

132. The Panel held several meetings with Government political and military leaders in El Geneina, El Fasher and Khartoum to discuss the above allegations. In essence the position of the Sudanese authorities and the findings of the Panel can be summed up as follows.

1. The Government's right to ensure the integrity of Sudanese territory

133. The Government of the Sudan stated that JEM conducted continual attacks on its forces and institutions. Those attacks had inflicted severe damage and led to the loss of many lives as well as to the loss of Government control in much of the northern corridor. Accordingly, the Government of the Sudan had the right to react and to re-establish control over its territory.

134. The Panel has found that indeed JEM posed a serious military threat to the Sudanese authorities. The northern corridor was largely under control of the Government until December 2007, when JEM forces launched major attacks on Sudanese army and police forces. Those attacks resulted in the death of many SAF soldiers as well as significant loss of equipment and finally led to the withdrawal of Government authorities and institutions from the centre of towns and the whole area as such. The area of Jebel Moon is principally under the control of the JEM, with enclaves controlled by the Abdul Wahid faction of SLA.

135. In the northern corridor up to and during those attacks, communities established armed local defence forces reportedly aimed at defending villages and towns from bandits, cattle thieves and Arab militias. During its investigation the Panel faced the question whether the local defence forces had to be considered as armed anti-Government forces that supplemented the military capacity of JEM in

the villages subject to attack. Witnesses in Sirba and Chad stated that many members of the local defence forces had joined JEM after the attacks. However, interviews with a member of Sirba's Native Administration and other witnesses showed that the local defence forces did not pursue an anti-Government agenda and did not take an active part in fighting on behalf of JEM.

2. Participation of pro-Government militias

136. The Government of the Sudan stated that SAF did not make use of or collaborate with other armed forces, i.e. pro-Government tribal militias often referred to as Janjaweed, the Border Intelligence Guard or PDF. The Government stated that tribal militias had not existed since the signing of the Darfur Peace Agreement.

137. The Panel has found that information provided in credible reports as well as by witnesses strongly indicates that forces from the Border Intelligence Guard, PDF, CRP and tribal militias participated in the attacks. The common pattern of the attacks implies that they were carried out as a joint enterprise. The distribution of roles was such that Government aircraft provided air support after which the militias conducted the initial ground assault. During this phase SAF was either not present or stood by and moved into a cleared and secured environment at a later stage.

138. Militias were given free reign to loot the property of the local population and to commit any other violation with impunity from later prosecution. There is no information available suggesting that SAF made any attempt to stop the militia attacks or initiate subsequent investigations into these activities.

139. The Panel conducted further investigations, including a confidential interview with a Government insider, concerning the details of recruitment and use of the above forces in the northern corridor attacks. According to the information provided, at the end of January 2008 the Minister of Defence, Abdulrahim Mohammed Hussein, reportedly accompanied by the former Governor of Northern Darfur, Abdallah Ali Safi el Nour, and other senior military commanders, visited El Geneina. They were acting in response to reports from the Western Darfur military leadership concerning the increasing military threat posed by JEM in the area.

140. The purpose of the visit was to finalize the plan and to mobilize support for a military operation in areas in the northern corridor controlled by JEM. The Minister held one meeting with Western Darfur security authorities and another with Arab tribal leaders in the premises of the Border Intelligence Guard.

141. The northern corridor attacks constitute a typical example of the operational division of activities between PDF, CRP and other tribal militias on the one side and SAF on the other. The Panel's witness confirmed that PDF and other militias conduct the initial assault while SAF troops move in once the area has been secured. Frequently the initial assault is preceded or accompanied by military air support, in the form of surveillance or actual bombing.

142. During these attacks non-SAF forces dress in unofficial khaki or camouflage military attire and do not wear a common uniform or rank signs. Nevertheless, SAF has command and control responsibility for these forces. The operational military commander during the northern corridor attacks was a former member of SAF who had been transferred to the Border Intelligence Guard, by the name of Ahmad Abd

Al Rahman Shukrt' Allah. The SAF operational branch in Khartoum held overall responsibility for planning and ordering the operation.

3. Responsibility for harm to civilian life and property

143. The Government of the Sudan stated that all military operations were carried out under strict observation of the principles of international humanitarian law. In particular, during the Panel's discussions with the military leadership in Khartoum, the SAF officer in charge of international humanitarian law pointed at efforts made by the armed forces and the Government to ensure that provisions of international humanitarian law were adhered to. He referred to a new armed forces bill and a code of conduct which incorporate the Geneva Conventions and their two Additional Protocols and make reference to the liability of military commanders.

144. The Panel acknowledges that SAF has made efforts to address violations of international humanitarian law by issuing and circulating new sets of rules. Despite the Panel's repeated requests these documents were not provided. The SAF representative in charge of international humanitarian law emphasized that violations of the code of conduct would not be tolerated. It appears, however, that these efforts have so far been limited to the legislative and administrative level. The operations in the northern corridor show that the newly introduced rules have not yet been implemented on the ground.

145. In particular, SAF failed to distinguish between civilians and combatants. It also failed to differentiate between civilian and military objects. The large-scale harm and destruction caused to civilian lives and property demonstrates that these obligations were seriously violated. According to customary international humanitarian law, an attacking force is obliged to provide effective advance warning of attacks which may affect the civilian population. Witnesses reported that no warning of this nature had been issued prior to the attacks. Available evidence also suggests that civilians were executed and humanitarian organizations and their personnel targeted.

146. In relation to the violations carried out during the northern corridor attacks, SAF military representatives stated that JEM forces were to be blamed for all damage inflicted on civilians as they used the civilian population as a human shield. They also accused JEM of pursuing a scorched-earth policy in order to destroy evidence of their alleged presence in the area and to incriminate the Government for the attacks.

147. The destruction of crops, foodstuffs and agricultural equipment violates the prohibition on the destruction of objects indispensable to the survival of the civilian population. The documented violations are punishable as war crimes according to article 8 of the Rome Statute of the International Criminal Court and, pending further investigation, possibly as crimes against humanity according to article 7.

148. Reports and witness statements taken by the Panel suggest that SAF and pro-Government militias acted jointly during their attacks on the northern corridor. Under the principles of international law a Government and its officials can be held responsible if militias acted as de facto State officials. The same applies in the event of the Government's failure to prevent or to repress certain violations. Government officials may still incur liability under joint criminal enterprise if individual criminal acts were committed without the Government's explicit order or support. In view of

the history of the Darfur conflict it was clearly foreseeable that engaging tribal and other militias as a tool of warfare would lead to the above-documented crimes and violations of international humanitarian law. Circumstances suggest that the Government willingly took this risk.

149. As regards the presence of JEM combatants among the civilian population it should be noted that a representative of SAF stated that JEM fighters had their main base in the Jebel Moon area and only maintained a highly mobile, but no standing, military presence in the other locations that were attacked in the northern corridor. Under aspects of international law, the presence of some elements involved in an armed struggle does not deprive the rest of the population of its civilian character and thus of the protection granted to civilians.

150. There is no indication that JEM combatants themselves committed the acts of large-scale destruction, looting, pillaging and targeting of humanitarian agencies. None of the witnesses interviewed and none of the reports available suggest that JEM pursued or pursues a deliberate "scorched-earth" policy.

VIII. Support of the Government of the Sudan for non-State armed groups in Darfur

151. The Governments of both the Sudan and Chad are engaged in a well-established practice of supplying arms, ammunition, vehicles and training to the armed groups opposing each other. Both Governments, while denying their own involvement in the practice, have expressed to the Panel their disquiet at the activities of the other as it relates to the provision of safe haven and other forms of military-related support for rebel groups within their respective territories.

152. Throughout the present mandate the Panel has received numerous reports of the regular elevated presence of Chadian armed oppositions groups in Darfur along with an equal prevalence of Sudanese armed opposition groups in Chad. In fact the Panel itself witnessed the unabashed presence of such groups while travelling through eastern Chad and visiting areas of Western Darfur.

153. The Panel met representatives of the Government departments responsible for internal security in both the Sudan and Chad. Both denied any knowledge of rebel movement activity on their territories. However, the Panel believes that they are in fact equally and implicitly aware of the presence of these groups in spite of official declarations to the contrary. Furthermore, reliable sources indicate that both countries actively support the unhindered operation of these armed movements through the provision of weaponry, military equipment and logistical support.

A. Support for Chadian armed opposition groups

154. The National Intelligence and Security Service (NISS) reportedly provides Chadian rebel movements with support in the form of vehicles, weapons and fuel. Resources are channelled from Khartoum through the use of commercial aircraft and those of NISS with SAF logistical assistance. These deliveries are normally executed in intensive bursts shortly in advance of major offensives such as that on N'Djamena in January 2008 and the attacks on Ade in July 2008. Sources indicate that supply flights during these periods operate up to three times daily into

El Geneina and bring in weapons ranging from DShK-type machine guns, Kalashnikov-type automatic rifles and rocket-propelled grenade launchers to anti-aircraft guns, multibarrelled rocket launchers and associated ammunition. Indications are that this supply system, thought to have been in place since 2005, is a stand-alone structure directly operated by NISS but implemented in parallel to the ongoing resupply of Government forces in Darfur in violation of the arms embargo.

155. Leaders of the Chadian armed opposition groups liaise directly with their NISS counterparts on attack strategy, and ground troops receive their allotted military supplies directly from NISS storehouses along with training in and around El Geneina. During its multiple visits to Western Darfur in 2008 the Panel has watched numerous technical vehicles and trucks clearly marked with the initials of different Chadian armed opposition groups circulating freely. In El Geneina itself, UFDD, UFDD-F, RFC and National Alliance vehicles and personnel openly move around town and interact closely with SAF. Resupply columns frequently visit El Geneina market and SAF military warehouses in order to buy goods and receive supplies from the Government. The Panel itself frequently observed clearly marked UFDD trucks moving in and out of Government compounds in El Geneina.

156. The Panel has received reports of Chadian armed opposition groups receiving extensive military training on Darfur territory throughout this mandate period. Weapons training of all types has been reported across Western Darfur on different occasions. The Panel arrived in an SAF-controlled area of Western Darfur in August 2008, for example, in close proximity to a heavy machine-gun live firing exercise. When asked about the security situation in the area, SAF personnel who received the Panel stated that all was calm and the sound of firing was of no concern as it originated from a nearby Chadian armed opposition group training exercise. Analysis of the groups' arms, ammunition and vehicle stocks encountered by the Panel showed a correlation between some of their stocks and SAF-issued equipment.

157. The Panel has consistently been informed by its interlocutors in the Government of the Sudan that no Chadian armed group is present on Sudanese territory. The Panel's findings, in spite of its limited access to these groups in Darfur, clearly prove that they are not only present but are openly hosted, supplied and supported by Sudanese authorities.

B. Support for pro-Government Arab militias

158. According to the Government of the Sudan, the pro-Government Arab militias once referred to as the Janjaweed no longer exist. The fighting forces previously classified as such have either been dismantled or integrated within the official State security apparatus in accordance with the terms of the Darfur Peace Agreement. A measure of truth can be attributed to this Government claim. There are indications that some Arab militias allied to the Government have indeed been incorporated in State security forces such as CRP and paramilitary structures like the Border Intelligence Guard. The issue of whether this effectively signifies an end to the scourge of the Janjaweed is, however, debatable. The strong tribal links that formed the original basis for Government recruitment of Arab militias, and arguably the creation of the Janjaweed, remain largely intact regardless of the militiamen's newly acquired employment status. The Government's penchant for providing them with

military material and support has been institutionalized, with arms, uniforms and training now being furnished as part of a legitimate induction process as opposed to the clandestine style of old. However, as the Panel has demonstrated in previous sections of this report, in both incarnations these forces have operated in concert with SAF forces during ground attacks on civilian and military targets and have habitually committed a range of violations of international humanitarian law and human rights abuses. Additionally, there remain other Arab tribal militias, incorporated within neither State nor parastatal entities. They too continue to operate in a manner that previously would have had them openly termed Janjaweed.

159. The Panel has found that during the period of its mandate the Government of the Sudan continued to provide support to armed militia groups in Darfur. Tribal leaders serve as the focal point for the mobilization of fighters. Government civilian coordinators located in each of the three Darfur State capitals maintain relationships and liaise with the tribal leaders. In exchange the Government provides these leaders with money and equips their forces with vehicles, fuel and arms.

160. A Government insider explained to the Panel that an unwritten agreement exists between SAF and the various pro-Government militias and paramilitary forces operating in Darfur. The agreement essentially relieves those forces of any responsibility for violations of international humanitarian law or human rights abuses and gives them free reign to loot, pillage, engage in summary killings and commit acts of sexual and gender-based violence in the course of attacks on civilian targets.

161. In order to provide the Government with the right of reply on this matter, the Panel raised the issue with the military leadership in Khartoum and El Fasher in March and August 2008. The Panel received contradictory answers to its questions during these meetings. The Panel was informed by SAF headquarters, for instance, that the Government had indeed made use of Arab pro-Government militias in the past but had halted the practice following the signing of the Darfur Peace Agreement. Making reference to the institutional reform process provided for in the Agreement and the envisaged integration of 2,000 parastatal militia members into SAF, the Government further stated that complete disarmament of the Janjaweed was an impossible task.

162. The Panel was told that the reform process, which referred mainly to the Border Intelligence Guard, PDF and the popular police, had stalled for a time owing to a lack of international funding and as a result was now implemented with financial support from the Government. Reference was also made to a presidential decree meant to transform the Border Intelligence Guard into the Border Guard Administration, a process which should eventually lead to the abolishment of the Border Intelligence Guard altogether.

163. The response received from the Western Military Command in August 2008 was a simple statement from the commander that as a result of integration measures, the Janjaweed no longer existed.

C. Observations and findings

164. The Government of the Sudan maintains and makes use of State security forces in the same way it previously used Arab tribal militias. This relates first and

foremost to the Border Intelligence Guards, PDF and CRP. Some former Arab tribal militias have now been absorbed into these forces in accordance with the Darfur Peace Agreement and Security Council resolution 1556 (2004), which demands that the Government of the Sudan fulfil its commitments and disarm Janjaweed militias. At ground level little has changed, however, as illustrated in the case study on the northern corridor attack (see sect. VII above). The Panel has established that during major military operations these forces, together with irregular Arab tribal militias, continue to act as auxiliary troops for the regular SAF and that their abuses of civilians continue unabated.

165. Very little detailed information has been provided by Government authorities with respect to the dismantlement and integration of pro-Government tribal and paramilitary militias. The Panel has requested such details on repeated occasions so as to be able to undertake an accurate situational assessment, but has met with little success. On the basis of available information the following conclusions can be drawn:

(a) Certain reform efforts were implemented, aiming the integration of militias into State security organs such as PDF and the Border Intelligence Guard;

(b) Reforms are currently under way to streamline the Government security forces by integrating PDF and the Border Intelligence Guard into the conventional military or police structures;

(c) Despite these efforts, the Government continues to make use of these units in violation of the Darfur Peace Agreement, and provides them with arms and associated material in violation of the arms embargo, while turning a blind eye to the violations of international humanitarian law and human rights abuses they commit;

(d) There does not appear to be a strategy for the disarmament of tribal militias operating outside of the two aforementioned integration processes.

D. Recommendation

166. **The Security Council should request from the Government of the Sudan the provision of regular updates on the disarmament process, including an account of the specific activities undertaken and concrete data concerning the number of militia members disarmed, trained and integrated, with special reference to unassociated tribal militias. These reports should also outline associated difficulties and proposed solutions, including international assistance if and when needed.**

IX. Darfur rebel groups

167. The beginning of the current Darfur conflict in 2003 was characterized by the presence of two major armed opposition groups, SLM/A led by Abdul Wahid Mohamed al-Nur and JEM led by Khalil Ibrahim Mohamed. At present there are more than 20 groups operating in Darfur. Most of these are small splinter factions with limited military presence or political influence.

168. During the reporting period the Panel met with numerous representatives of armed opposition groups inside and outside of Darfur. The reporting period witnessed largely futile efforts among these numerous splinter groups to unify. One attempt, for example, saw the formation in late 2007 of an umbrella group called the United Resistance Front, which brought together JEM-Collective Leadership,[7] the United Revolutionary Force Front, the SLA Field Command led by Khamis Abdullah and the National Movement for Redemption and Democracy led by Khalil Abdullah. In June 2008, the newly formed coalition fell apart and the founding members returned to their original structures.

169. Many armed splinter groups appear to be motivated primarily by opportunistic private interests without following coherent political agendas. They lack clear command and control structures and possess only a limited number of vehicles and weapons but nevertheless try to secure a place at peace negotiations. These groups acquire equipment and vehicles and sustain their activities by conducting acts of banditry and carjacking, often targeting humanitarian, United Nations and commercial entities.

170. On the basis of its own observations the Panel believes that JEM, created in August 2001, has emerged as the most powerful armed group in Darfur. It is led by its president, Khalil Ibrahim Mohamed, and a legislative council chaired by Eltahir Abdam Ekfaki.

171. JEM has a strong network of members based outside the Darfur region. The Panel suspects that this network engages in a range of support activities inclusive of fund-raising and public information. The Panel met with a number of network members in the Gulf States, Europe and elsewhere. In N'Djamena, top JEM leaders such as Suliman Noor Bushara (secretary of foreign affairs and international relations) and Izzedeen Yusuf Baggi (secretary of presidential affairs and economic secretary) openly go about their daily business. Other JEM members have indicated to the Panel their control of certain business interests in the country.

172. JEM continues to implement a strategy of carrying the Darfur conflict across regional borders. In a telephone conversation between Khalil Ibrahim and the Panel on 21 April 2008, the JEM leader announced the group's intention to take the battle to places such as Kordofan State and other locations outside Darfur. The most prominent example of this strategy in practice is the attack on Omdurman on 10 May 2008. At a subsequent meeting in N'Djamena the absolute determination of JEM to repeat these attacks outside Darfur was best illustrated when one of the senior members of JEM told the Panel members ominously: "Write down, we *will* do it again."

X. Supply of arms and related materials to rebel movements

173. The Panel endeavoured to obtain information relevant to the provision of arms and ammunition to non-State armed groups by Member States or through private individuals or companies. The Panel has collected large amounts of technical data on arms, ammunition and other equipment used by rebel movements during the current mandate and has traced the chain of ownership of much of this material. The

[7] During the reporting period, JEM experienced an internal split. The former vice-chairman, Idriss Abu Garda, and chief commander Abdullah Banda formed the JEM-Collective Leadership.

collection and cataloguing of evidence in this regard was done through field investigations, direct contact with rebel movements and examination of materiel seized by Governments as the result of military engagements. The Panel utilized a sample analysis approach in its ownership tracing investigations, believing that, given the large quantity of data collected and limitations of capacity, time and access, this method would be most effective in providing a representative snapshot of ongoing embargo violations by rebel movements in Darfur.

174. The Panel has identified numerous points of manufacture, origin and transfer of the arms utilized by JEM and other armed groups operating in Darfur. Often the tracing process was made impossible by marking deterioration and the age of many of the weapons. The spectrum of manufacturers linked to the weapons catalogued, along with the array of potential intermediaries involved in their movement, has led to significant difficulties in terms of identifying ownership chains. Timely and accurate assistance by manufacturing and transferring countries is a necessary element in tracing the point at which this materiel has been diverted from legal ownership into the hands of groups or into territory subject to United Nations embargo.

175. The Panel has requested assistance in writing from 20 Member States during the course of the current mandate. It has received replies from fewer than half of them. In some cases the replies have been incomplete or failed to provide the information requested. In spite of this low response rate, the Panel has made some progress in identifying elements of the sources of weapons and ammunition supplied to Darfur armed groups.

176. The weapons catalogued by the Panel for tracing have included single- and multi-barrelled rocket and grenade launchers, surface-to-air missiles, handguns, general-purpose and heavy machine guns, anti-aircraft guns, light automatic and recoilless rifles and mortars along with associated ammunition.

177. In attempting to trace the chain of ownership of these weapons the Panel requested assistance from Belgium, Bulgaria, Chad, China, the Czech Republic, Egypt, the Islamic Republic of Iran, Iraq, Israel, the Libyan Arab Jamahiriya, the Russian Federation, Serbia, Spain, the Sudan and the United States of America.[8]

178. Given the constraints related to weapons tracing and the limited time frame of the mandate, particular focus was placed on the arms and munitions supply chain operating within JEM. Given the primary role of JEM in the ongoing conflict and its status as one of the largest movements operating on the ground, the Panel's findings as they relate to JEM are considered to be indicative of the manner in which weapons and munitions are supplied to other significant rebel movements operating in Darfur.

A. Justice and Equality Movement

179. Since the end of 2007, JEM has proven to be the most active Darfur armed group. JEM has made it abundantly clear through its actions in this period that it

[8] The Panel's approaching these countries does not in any way suggest their involvement in an arms embargo violation. The Panel has written to these Member States because it considers that they may have information of value to its investigations.

favours an aggressive, offensive military pursuit of its objectives in Darfur over any substantive participation in peace negotiations.

180. During the current mandate period JEM has conducted military strikes in Western Darfur in an effort to gain control over a large swath of territory in the northern corridor; operations in Chad in support of the Chadian National Army as far inland as the capital, N'Djamena; attacks on oil installations in Kordofan; and a major assault on the Sudanese capital of Khartoum with the stated aim of overthrowing the Government.

181. In order to sustain these activities JEM requires arms and related materiel, vehicles, fuel, finance and personnel. JEM has shown a remarkable ability to arm its forces prior to attacks and rearm and resupply itself following periods of fighting where it has lost or expended significant amounts of equipment and ammunition. Furthermore, analysis of the military capabilities of JEM reveals a clear ability not only to sustain its capacity but to improve it by the addition of newer, more powerful and more technologically advanced types of equipment to its arsenal.

182. Although JEM is a Sudanese armed group, the vast majority of its forces are based in eastern Chad. The Panel has travelled to that area and viewed JEM vehicles and personnel openly circulating in towns, villages and refugee camps. JEM combatants report that they have received training and been issued equipment in military camps on both sides of the Darfur-Chad border.

183. JEM receives the majority of its support and resupply on Chadian territory. It continues to enjoy close relations with the Government of Chad and its top commanders have frequently been interviewed by the Panel while operating unhindered in N'djamena or enjoying the support of the Government of Chad in the east. This support is reciprocal. JEM has openly admitted to the Panel that during the attacks on N'Djamena in January 2008 by an alliance of Chadian armed opposition groups, its forces travelled to N'Djamena with the aim of fighting in support of President Idris Deby's Government. Interviews with JEM combatants have illustrated the Movement's close relationship with the Chadian National Army through joint operations and common resupply in eastern Chad.

184. As a highly mobile guerrilla force habitually conducting long-range operations, JEM is made up of units based primarily upon "technical" 4x4 vehicles. Heavy supply trucks support these mobile units from the rear of their columns and deliver supplies to static camps or positions when they have been established. JEM trucks and "technicals" have proven to be acquired from outside Darfur by commercial transaction, from stockpiles of the Government of the Sudan, or by way of vehicle hijackings in Chad and Darfur.

185. Although JEM does not have air assets of its own, the Panel has repeatedly received information that Chadian Government and commercial aviation assets are used within Chad to provide logistical support for JEM.

186. The Panel has encountered JEM units armed with weaponry ranging from 9mm pistols, 5.56mm and 7.62mm automatic rifles of various types and ages, general-purpose and heavy machine guns and 75mm and 106mm recoilless rifles, to 107mm single- and multiple-barrel rocket launchers, 122mm rockets and launchers, various rocket propelled-grenades and 60mm, 82mm and 120mm mortars. It also has significant anti-aircraft capacity that includes vehicle-mounted 14.5mm and 23mm anti-aircraft guns and man-portable surface-to-air missiles.

187. Analysis of these stocks of arms and related materiel shows that whether of pre- or post-embargo production they may be divided into three main groups. Firstly, a significant number of these items have at one time formed part of legitimate shipments into Government stockpiles of States that border Darfur. Secondly, JEM has procured equipment from the stocks of the Government of the Sudan either through battlefield acquisition, Government insiders or other sources internal to Darfur. Lastly, some JEM stocks manufactured outside the region have been acquired from sources other than those just mentioned, but conclusive tracing has been hindered by a lack of response from Member States, incomplete markings or the age of the equipment.

B. Weapons and ammunition

Material seized by the Government of the Sudan

188. Twice during the early stages of the present mandate, military representatives from the Government of the Sudan presented the Panel with significant amounts of ammunition, arms, equipment and documents purported to have been seized from non-State armed groups during armed engagements. Direct interaction between the Panel and rebel movements in the field established the validity of these claims in that the Panel witnessed the same models of weapons and types of ammunition within rebel holdings. Frequently, the Panel confirmed military materiel currently in use by the movements, particularly ammunition, as having originated from identical lots and manufacturers.

189. The Panel visited Government military storage sites in El Geneina and Nyala to catalogue and examine materiel reportedly seized from JEM and other rebel movements. The weapons and ammunition included 40mm single-shot and automatic grenade launchers; general-purpose machine guns of FN MAG and PK models, variants or copies; light automatic rifles of G3, FN-FAL and Kalashnikov AK-47 and AKM models, variants or copies; 60mm, 82mm and 120mm mortar tubes; rocket-propelled grenade launchers of RPG7 and RPG9 models, variants or copies; surface-to-air missiles, trigger assemblies and launchers; 82mm high-explosive anti-tank rounds; and 60mm mortar shells.

190. In May 2008, JEM launched an armed assault on Khartoum which reached its twin city, Omdurman, before being repelled by Government forces. Immediately following this failed attempt, the Panel gained access to the weapons and equipment seized by the Government from JEM during the fighting. They included multi-barrel rocket launchers of Type 63 model, variant or copy; single-barrel rocket launchers; general-purpose machine guns; light automatic rifles; anti-aircraft guns; and 106mm and 75mm recoilless rifles. The ammunition included a range of small- and large-calibre cartridges, surface-to-air missiles, 75mm and 106mm recoilless rifle rounds and 107mm rockets with associated proximity fuses.

122mm rockets

191. A number of 122mm rockets and vehicle-mounted launchers have been observed by the Panel in stocks seized from JEM and in Darfur fitted to JEM vehicles. JEM combatants told the Panel that this type of vehicle-mounted launcher had come largely with the strengthening of JEM armament prior to the attack on Omdurman. One combatant described in detail how vehicles newly fitted with

122mm rocket launchers had been driven from the Chadian side of the border into Darfur where the individual was stationed. The interviewee clearly stated that the majority of JEM combatants in his unit had previously neither seen nor operated this type of rocket.

192. Two 122mm rockets found in JEM stocks are clearly marked both on the rockets themselves and on their packaging as produced by the Arab Organization for Industrialization (AOI). Other 122mm rockets held by JEM were found in metal storage racks that were marked "FHQ JORDAN ARMED FORCES. DIR OF PLNG & ORG. AMMAN JORDAN". The Panel asked the Government of Egypt for assistance in determining the provenance of the rockets. The reply confirmed AOI as the manufacturer of the 122mm rockets identified by the Panel. The Government of Egypt further stated that production of that model had ceased as of 1984. It indicated that a limited number of those rockets had been delivered to Iraq in 1983 but provided no detailed information regarding the transfer or end-use certification.

General-purpose machine guns

193. The general-purpose machine guns examined by the Panel appeared to be of W-85 and PK models, variants or copies. Requests for assistance in tracing the chain of ownership were submitted to the Russian Federation and China. The Russian Federation indicated that the weapons in question did not coincide with markings common in either the Russian Federation or the former Soviet Union. The response further stated that the weapons had not been registered in the Russian Federation as stolen or lost nor registered with the Ministry of Defence. Additional tracing details were deemed impossible as the registration documents of the period in question had been destroyed upon expiration of their storage period. Thus far no response has been received from China on this subject.

Anti-aircraft guns

194. The anti-aircraft guns examined by the Panel appeared to be of ZU-23, type 58, type 77 and type 85 models or variants. Requests for assistance in tracing the chain of ownership were submitted to the Russian Federation and China. The Russian Federation, while confirming the weapon model, indicated that insufficient marking information made further identification impossible. Thus far no response has been received from China on this subject.

Photo 24
Double-barrelled anti-aircraft gun

Light automatic rifles

195. Light automatic rifles examined by the Panel were identified as being of M-16, G3, FN-FAL, Kalashnikov AK-47 and AKM model types, variants or copies and of production dating as far back as the early 1960s. A request for tracing assistance was submitted to the Russian Federation, which in response confirmed that markings on some of the weapons corresponded to the Izhevsk machine building plant in the city of Izhevsk and the Tula armoury in the city of Tula. The weapons had been produced between 1961 and 1980 and were therefore untraceable.

Surface-to-air missiles

196. On two occasions the Panel encountered components belonging to surface-to-air missiles that appeared to be of a SAM-7 model or variant. On the first occasion only the trigger assembly was found. However on the second occasion five-shoulder launched man-portable air defence system 9M32M missiles with 9P54M launcher units were identified. These were stored in packing crates with the following markings: "D. G. of Military Accounts, L/C No 86/1/379, Contract Number 42606, Baghdad — Iraq". Requests for assistance in tracing the chain of ownership were submitted to the Russian Federation, Iraq, Serbia, Bulgaria and the Czech Republic. Only the Russian Federation has responded to the Panel on this subject, stating that the items were not produced within the Russian Federation or the former Soviet Union. Furthermore, the only Soviet producer of 9M32M missiles, the JSC Dyagterev Plant, had discontinued production in 1982. All of the plant's documents had been destroyed in conformity with official regulations.

Ammunition

197. The majority of JEM ammunition stocks are of pre-embargo production and have proven to be difficult to trace within the time frame available to the Panel. There have been, however, a number of clusters of ammunition of particular note.[9]

7.62 x 54mm ammunition

198. The Panel identified significant amounts of pre-embargo production armour-piercing light ball 7.62 x 54mm rimmed mild steel core cartridges with copper washed steel casings among the ammunition seized during the attack on Omdurman. Further investigations carried out by the Panel led to the discovery of the same type of ammunition with the same headstamp, year of manufacture, lot number and packaging markings in the hands of JEM units in Darfur.

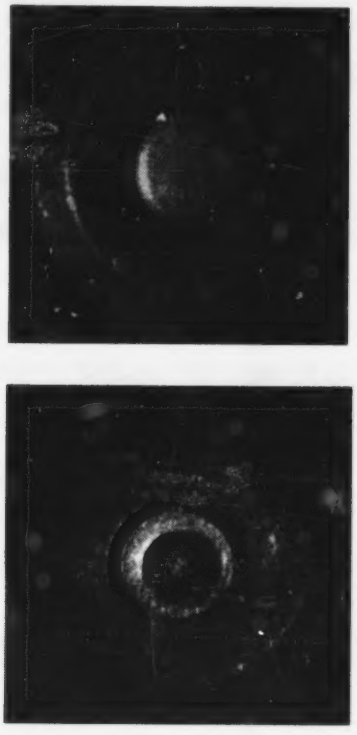
199. This ammunition is believed to originate from a Bulgarian manufacturer. A written request was submitted to the Government of Bulgaria for assistance in tracing the chain of ownership. At the time of the writing of this report, the Bulgarian company "Arsenal AD" had indicated that the markings found on the ammunition in question were consistent with their established method of marking.

[9] The two clusters of post-embargo production ammunition mentioned in this section also correlate to ammunition discovered by the Government of Chad in the stocks of the Chadian armed opposition group during its attack on N'Djamena of January 2008. The Panel of Experts has met with representatives of the Government of China in both New York and Khartoum and suggested a technical visit to China to pursue the tracing of this and other material of Chinese production found in Darfur. This suggestion has met with a favourable response and the Panel hopes that it can be followed up on during a future mandate of the Panel of Experts.

Final confirmation concerning the recipients and delivery details of those lots of ammunition was outstanding. Bulgarian authorities continue to cooperate in efforts to identify the point of diversion and details as to the chain of ownership.

200. Within other stocks of 7.62 ammunition found in the hands of JEM or used in JEM attacks has been ammunition which, according to its markings, appears to be of post-embargo production.

Photos 25 and 26
Headstamps of post-embargo production ammunition found in the hands of JEM



201. The Panel has asked the Government of China to assist in determining whether this ammunition has been manufactured in Chinese factories and, if so, to ascertain details of its sale or transfer. The Panel is yet to receive a response to this request.

12.7mm ammunition

202. Within JEM-held stocks of 12.7mm ammunition was again found a significant amount of what appears to be marked as post-embargo production ammunition. This 12.7mm armour piercing incendiary ammunition was found across the JEM fleet of vehicles in Omdurman, both loose and in boxes, and in Darfur. Again, the Chinese authorities have been asked to assist in determining whether this ammunition is of Chinese manufacture, as suggested by its markings and if so whether its chain of ownership can be traced. The Panel has not yet received a response to its request.

Photo 27
Headstamp of post-embargo production ammunition found in the hands of JEM

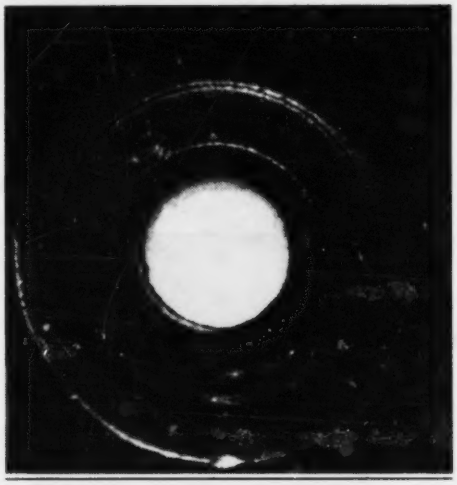


Photo 28
Post-embargo production ammunition found in the hands of JEM

14.5mm ammunition

203. A significant cluster of 14.5mm ammunition with similar production markings was found in the hands of JEM. Although this ammunition has multiple production dates which all precede the imposition of the embargo, the Panel has seen evidence of ammunition marked in this distinct way both in the hands of JEM combatants with whom it has interacted in Darfur, and following JEM attacks.

204. Each JEM vehicle fitted with a 14.5mm machine gun encountered by the Panel had from one to six spare boxes of 14.5mm ammunition transported in the bed of the pickup truck, exposed to the elements and kept in among other loose supplies and equipment. JEM daily expenditure of ammunition in Darfur appeared to the Panel to be relatively low, and boxes of ammunition of this type are seemingly often carried in this manner for weeks or months before use. The 14.5mm ammunition is of 1970s or 1980s production. In spite of their age and the apparently rough manner of transport, many of the ammunition boxes encountered by the Panel were seemingly

in near-perfect condition. This is indicative to the Panel that these boxes of ammunition have been largely stored indoors or perhaps formed part of a conventional stockpile following their production and have only recently been issued to JEM mobile units.

C. Leakage from regional Government weapons stocks

205. The Panel has found arms and related materiel in the hands of JEM that at one time formed part of the stocks of Sudan, Chad and Libya. These countries all hold legitimately transferred stockpiles on territory that is not affected by the arms embargo on Darfur. The situations in which arms appear to have leaked from these stockpiles is different in each case but both government and the armed groups alike cite these stockpiles as an important contributing factor towards the maintenance of rebel military capacity.

1. Chadian stockpiles

Tavors and Galils

206. The Panel first reported on the use of Israeli-manufactured 5.56mm Galil and Tavor assault rifles in Darfur in its report of 3 October 2007 (S/2007/584).

207. In that report the Panel described viewing a range of weapons presented by the Government of the Sudan allegedly seized from a rebel movement in Darfur. Among these were identified a number of 5.56mm Tavor and Galil weapons manufactured at Israel Weapon Industries. Accordingly, the previous Panel wrote in March of 2007 to the Government of Israel requesting assistance in tracing the supply chain for the weapons in question. A response was not received from the Israeli Government until July of 2008.

Photo 29
Israeli-manufactured Tavor rifle

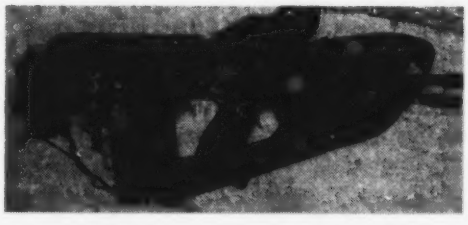


Photo 30
Israeli-manufactured Galil rifle

208. The present Panel identified additional Tavor and Galil rifles among weapons alleged by the Government of the Sudan to have been seized from JEM during armed encounters during the present mandate period. The Panel wrote to the Government of Israel in July 2008 requesting further assistance in tracing the ownership path for these weapons.

209. With the assistance of the Government of Israel all of these weapons have been traced to shipments sold as part of a legal arms transfer between Israel Weapon Industries and the Government of Chad in July and September 2006.

210. One Galil rifle was found to be loaded with post-embargo production 5.56 x 45mm ammunition, manufactured in Serbia in 2006 by the company Privi Partizan.

Photo 31
Headstamp for post-embargo production 5.56 x 45mm ammunition

211. With the assistance of the Government of Serbia, the Panel has learned that 4 million rounds of this exact ammunition type, and with an identical production date, were sold by Privi Partizan on a Government of Chad end-user certificate, as part of a deal brokered by Israel Weapon Industries in 2006.

212. As in the case of the Galil and Tavor rifles, this delivery in itself is not a violation of the Darfur arms embargo. That these weapons and ammunition were subsequently diverted from Chadian Government stockpiles, and entered into Darfur to be used by JEM, is where the violation lies.

213. In that vein, the Panel submitted a written request to the Government of Chad requesting clarity on this issue. As of the writing of this report, the Panel has not received a response.

214. The Panel has also on numerous occasions requested to view other arms and related military materiel seized by the Government of Chad from Chadian Armed Opposition Movements alleged by the Government to have been supplied in violation of the Darfur arms embargo. Lists and pictures of some of these arms, munitions and vehicles have been provided to the Panel but all requests for direct access have been frustrated. Sources close to both the JEM and other armed groups allege that arms and related materiel captured in this manner has regularly been redistributed to JEM and other Sudanese armed opposition movements in support of their operations in Darfur. The Panel has noticed parallels between information provided from the Chadian Government related to captured weapons, and the status of JEM stocks of embargoed material. However a lack of access provision to these

stocks and incomplete technical data have made conclusive analysis on a direct correlation impossible.

75mm and 106mm recoilless rifle cartridges

215. The Panel identified a range of 75mm and 106mm recoilless rifle cartridges within JEM stores seized during the Omdurman attack. Among them the following types were identified: M310A1 model high-explosive squash head cartridges; M344 A1 model high-explosive anti-tank cartridges; NR 160 A1 model tracer composition B cartridges; NR 601 model high-explosive anti-tank tracer compound A3 cartridges; M94B1 model high-explosive anti-tank and anti-personnel cartridges and M310A1 model high-explosive anti-tank composition B cartridges.

216. With the assistance of the Government of the United States it was established that the 106mm M344 A1 model cartridges were provided by United States manufacturers through the United States foreign military sales programme to the Government of Chad between 1983 and 1987. These details were received late in the mandate, consequently the Panel has not been able to follow up with the Government of Chad.

2. Libyan stockpiles

217. Chain-of-ownership tracing undertaken by the Panel identified several items used during the battles in Omdurman as having been delivered from the manufacturer to the Libyan Arab Jamahiriya. These items are of pre-embargo production and include Spanish-produced 106mm M40 A2 recoilless rifles with .50 M8 spotting rifles attached; a number of Belgian-produced 106mm recoilless rifle cartridges; and Bulgarian-produced PG7 anti-tank grenades and PG7P expelling charges. Formal letters of assistance were submitted to the Governments of the Libyan Arab Jamahiriya, Spain and Belgium with a view to identifying the chain of ownership of these items.

218. The Panel also travelled to the Libyan Arab Jamahiriya in person to discuss these and other issues related to the mandate with the Libyan Government. The meetings requested with representatives of the Military Procurement Department and the Ministry of Defence were unfortunately not deemed possible during the Panel's visit. The Panel did meet, however, with representatives of the departments of security and disarmament affairs, aviation, foreign affairs, intelligence and international organizations. The responses attributed to Libyan authorities below were received during that meeting. The Panel also asked for the responses to be put in writing, as it routinely does when making formal requests for assistance from member countries. Libyan authorities declined to provide responses in that form.

Spanish 106mm M40 A2 recoilless rifles

219. With the assistance of the Government of Spain, the Panel has learned that the .50 M8 spotting rifles were produced in the Oviedo arms factory in 1979, transported that same year to the "Fábrica de Artillería de Sevilla" and attached to the 106mm M40 A2 recoilless rifles. The recoilless rifles, produced by the manufacturer "Empresa Nacional Santa Bárbara de Industrias Militares, S.A.", formed part of a batch of 189 rifles originally sold under export licence along with spare parts, to the Directorate of Military Procurement of the Libyan Arab Jamahiriya at Al-Jamahiriya Street, Tripoli, in 1981.

220. Additional information provided to the Panel by reliable sources indicates that the discovery in the region of materials exported from Spain to the Libyan Arab Jamahiriya and subsequently found in violation of the arms embargo is not an isolated occurrence. Sources indicate that 106mm ammunition produced in Spain has also been recently discovered in the hands of militia forces in Chad. The Panel's requests to the Spanish authorities for assistance regarding this allegation remain outstanding to date.

221. When asked for information related to the presence of the recoilless and spotting rifles within Libyan stocks in 1981, Libyan authorities gave several responses. The first was that records of Government weapons stocks during the 1980s were no longer available but that the period in question (1981) had been one of high insecurity and instability with widespread uncontrolled weapons proliferation. The possibility therefore existed that the recoilless and spotting rifles could have been taken unbeknownst to the Government of the Libyan Arab Jamahiriya as a consequence of the instability of the time, and then later passed on to rebel movements. The second response was the suggestion that the Panel's information sources were unreliable. The third response, directly following the second, was that if the Panel's sources were in fact reliable, then the information had come as the result of a conspiracy and that the details gathered were in fact an attempt to mislead the Panel and discredit the Government of the Libyan Arab Jamahiriya given its prominent role as a regional mediator.

PG7 anti-tank grenades and PG7P expelling charges

222. Packing sheet details accompanying this material indicated that the case of PG7 anti-tank grenades and PG7P expelling charges examined by the Panel following the JEM attacks on Omdurman was part of a consignment of 20 cases packed in 1982. Markings on the packaging ("SPLAJ, Tripoli/Bengazi") indicate that the materials transited through the Libyan Arab Jamahiriya at some point during their chain of ownership. Requests for assistance on this issue were submitted to Bulgaria and the Libyan Arab Jamahiriya. Bulgaria stated that the material had been part of a consignment of 46,000 pieces delivered to the Libyan Ministry of Defence under contract in 1982. The response from the Libyan Arab Jamahiriya on this issue was to question the reliability of the Panel's sources. Again indicating the probability of conspiracy, the Libyan authorities stated that the markings could easily have been faked.

106mm recoilless rifle cartridges

223. The majority of 106mm recoilless rifle cartridges identified in JEM stores had manufacturing dates ranging from the late 1960s to the early 1980s. Requests for assistance in tracing the chain of ownership, besides being submitted to the United States (see paras. 177 and 216 above), were also submitted to Belgium. With the assistance of the Government of Belgium it was established that a number of 106mm high-explosive anti-tank tracer and compound A3 cartridges were manufactured by the Belgian company "Poudreries Réunies de Belgique" some time between 1980 and 1981. It was further determined that an export permit for this type of ammunition was delivered to the Libyan Arab Jamahiriya during the same period. Absolute confirmation of whether the cartridges viewed by the Panel originated from this same stock is lacking however, as the original export permit files are no longer available owing to the expiry of the archiving period.

224. The Panel inquired as to whether the Libyan defence forces had ever used the type of cartridges in question. No answer to this question was provided by Libyan authorities. Instead general reference was made to Libya's reliance on Eastern bloc countries for weapons and ammunition at the time.

Observations

225. As in the Chadian cases, deliveries of weapons and ammunition to Libyan authorities outlined above do not constitute a violation of the Darfur arms embargo. Also analogous to the Chadian case, however, the weapons and ammunition ended up in JEM weapons stockpiles and were subsequently used, in violation of the embargo, in Darfur and in an armed assault on the Sudanese capital.

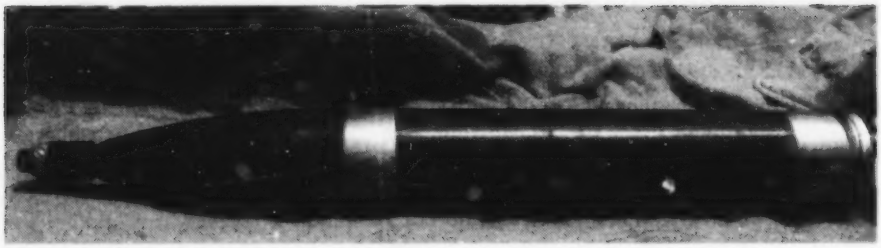
3. Sudanese stockpiles

226. During the Panel's interaction with leaders of JEM and its combatants in the field, JEM has consistently claimed that a major source of arms, ammunition and vehicles for their movement is battlefield acquisitions from SAF. This assertion is supported by the Panel's findings while investigating arms seizures from JEM in Southern and Western Darfur and Omdurman.

227. Senior SAF commanders have admitted that JEM has managed to capture significant amounts of arms and ammunition during this mandate period. One example of this is illustrated in an earlier section of this report, where reference is made to the battlefield acquisition of SAF Dongfeng military trucks and their cargo of arms and related military material by JEM forces during an ambush in Western Darfur. This example is far from unique as this is a trend prevalent among both JEM and other rebel movements. Low-level attacks on military and police individuals, convoys and static positions serve to maintain field capacity while major offensives allow for significant resupply and the acquisition of new types of weaponry.

228. General-purpose machine guns, mortars, ammunition and vehicles have been found that are identical to those used by the Sudanese security forces. There is a high probability that post-embargo production ammunition used by JEM in its attacks on Omdurman was acquired by JEM following fighting in Darfur. The Panel has approached the Governments of China and the Sudan in order to trace the chain of ownership of general-purpose machine guns found in JEM stocks in Darfur and Omdurman that were identical to the machine guns used by SAF. No response has been forthcoming. With the assistance of the Chinese authorities, the Panel has traced MJ-1 proximity fuses manufactured in China and fitted by JEM forces to their stock of 107mm rockets during the attacks in Omdurman. These fuses were transferred from China to the Government of the Sudan in January of 2004 in a legitimate arms delivery. These fuses are now used against the forces of the Government of the Sudan in attacks by JEM.

Photo 32
107mm rocket fitted with MJ-1 proximity fuse



229. The Government of the Sudan initially expressed its support of the Panel's lines of inquiry in tracing the provenance of JEM equipment used in attacks against Government forces. When it came to providing specific information on what appear to be Government arms and ammunition found in JEM stocks however, any substantive support to the Panel was lacking. The Panel has approached the Government of the Sudan to request details of its loss of military equipment inside Darfur. Although logistics officers in SAF have clearly stated to the Panel that detailed information SAF maintains on the arms and ammunition held by its units and thus also on the material that is lost, the Government's official position is that it does not have any information on this material and thus cannot assist Panel inquiries.

230. In a meeting with the SAF military command in Khartoum it was explained to the Panel that although significant amounts of military material are stolen from SAF in Darfur, this does not pose a significant security threat within the Sudan as the armed groups immediately take the equipment out of Darfur and sell it on the illicit regional arms markets, namely in Chad. The evidence collected by the Panel during this mandate does not support this conclusion.

231. SAF stocks in Darfur have proven to be a constant source of supply to the Darfur armed groups. Groups consistently use SAF weaponry lost during military engagements and continue to resupply themselves through battlefield acquisition. The transfer of arms and related material into Darfur by SAF in violation of the United Nations arms embargo directly provides arms and ammunition to Sudanese Government forces. It also, however, provides significant amounts of new arms and ammunition to the Darfur armed opposition groups and allows them to conduct operations against the Government.

4. Recommendation

232. **The Panel of Experts recommends that the Security Council oblige the Government of the Sudan to allow free access by the Panel to all SAF installations so as to facilitate the efficient monitoring of Government weapons and munitions stocks in Darfur.**

D. Vehicles

233. The Panel has continued to investigate the lines of supply to armed groups in Darfur of vehicles that are converted into "technicals" and used in attacks. Captured and destroyed JEM vehicles have been encountered by the Panel both inside and outside Darfur. In its attack on Omdurman, JEM lost over 75 4x4 vehicles, the majority of which were manufactured after 2005 and some as recently as 2008. This indicates recent acquisition by JEM forces in Darfur and Chad. With the support of the Government of Japan the Panel has been able to trace some of the Toyota vehicles seized in Omdurman.

234. One vehicle supply vector is explained more comprehensively in the finance section of the present report. Concerning the theft of humanitarian and United Nations vehicles, the Panel has itself examined JEM vehicles in Darfur and Khartoum that come from these sources. Civilian vehicles and those stolen from humanitarian actors have consistently been found in the hands of JEM. In Omdurman, white civilian 4x4s repainted in desert camouflage made up a significant part of the stock of captured vehicles. In February 2008 in Darfur, following the JEM annexing of territory in the northern corridor of Western Darfur, JEM stole civilian vehicles from international non-governmental organizations, smeared them with mud and used them in their operations. The Panel encountered two vehicles stolen from an international non-governmental organization being used in this way that were later recaptured by SAF.

235. The Panel has also found vehicles that have been shipped to Governments in the region diverted into the hands of armed groups. With the assistance of the authorities of the manufacturing and exporting countries of these vehicles the Panel is in the process of investigating the provenance of around 100 JEM vehicles and will report on this when its investigations are complete. Preliminary findings concerning the chain of ownership of some JEM vehicles show similarities with a case the Panel has been working on concerning vehicles found in the hands of an SLA-Unity commander in Northern Darfur. One vehicle, with chassis number JTFLB71J368011275, is a 2006 production model. It was found that Toyota Tsusho Corporation sold this vehicle to Golden Arrow Company Ltd., of Khartoum and Golden Arrow Ltd. further sold the vehicle to the Ministry of the Interior of the Sudan. The Government of the Sudan later moved this 2006 production vehicle into Darfur, where it was captured and is now used by SLA-Unity. At least eight similar vehicles seized by the Government during the Omdurman attack and shown to the Panel appear to have been sold from Toyota to Golden Arrow Ltd.

236. Panel investigations to date indicate three main avenues for JEM vehicle acquisition: (a) vehicles stolen from humanitarian, commercial and international non-governmental organizations and the United Nations in Darfur and Chad; (b) leakage of vehicles from Government stockpiles; and (c) vehicles procured outside Chad and Darfur that are provided to JEM through commercial channels.

XI. Case study: use of children by the Justice and Equality Movement in the Omdurman attack in view of applicable principles of international humanitarian law

237. On 10 May 2008, JEM forces launched an attack on Omdurman, Khartoum's twin city on the western side of the Nile River. The attackers approached the city with approximately 300 heavily armed vehicles. In public statements JEM justified its attack as a continuation of the war in Darfur and announced that further strikes would follow. In conversations with the Panel, a member of the JEM leadership called the attack a message of JEM strength and reiterated the movement's intention to conduct similar attacks in the future.

238. Information on the casualties on either side and the numbers of those captured has not been independently verified. The detainees were tried before five special courts and in accordance with the 2001 Anti-Terrorism Act. The courts and judicial procedures appear to undermine international fair-trial guarantees and those enshrined in the Constitution of the Sudan. At the time of writing 50 defendants had been sentenced to death. In the aftermath of the attack, Government army and security services conducted numerous arbitrary arrests in Khartoum as well as in Darfur and other parts of the Sudan that targeted alleged JEM supporters.

239. Eighty-nine children were captured during the initial JEM attack on Omdurman. The Sudanese authorities accommodated the children in a training facility of NISS approximately 100 kilometres north-west of Khartoum. Observers report that the juveniles were given proper care. The Panel gained access to some of these children.

A. Background regarding children in armed conflict in the Sudan

240. The recruitment and use of children is a widespread phenomenon in the context of the Darfur conflict. Information conveyed to the Panel suggests that children associated with armed groups have been observed in the ranks of most of the armed actors, namely CRP, SAF, PDF, the Popular Movement for Rights and Democracy, JEM, SLA-Unity, SLA/MM, SLA/AW, SLA/AS, militias associated with the Government of the Sudan, the Chadian National Army and Chadian rebel groups.

241. Following the signing of the Darfur Peace Agreement the United Nations Children's Fund (UNICEF) has engaged the signatory movements on the issue of child recruitment. In June 2008 the Transitional Darfur Regional Authority in cooperation with UNICEF and other Sudanese actors launched a programme for the disarmament, demobilization, and reintegration of children associated with armed groups. On 11 July 2008, JEM and SLA-Unity issued a joint statement by the opposition movements within the context of the Geneva/Darfur Humanitarian Dialogue. Among other issues both movements announced that they would take measures for the protection of children in Darfur and reaffirmed their commitment to refrain from recruiting children for military operations.

242. Despite the above, credible reports exist and information has been shared with the Panel that JEM is actively involved in the recruitment of children associated with armed groups in several Darfurian refugee camps in eastern Chad and in the

Sudan. The available documents relating to the captured children suggest that 5 of the 89 children are from Chad. The majority comes from the Sudan, namely from Western Darfur.

243. The Panel did not find evidence of large-scale forceful recruitment conducted by JEM as had been alleged in some reports. To join the armed opposition is often considered a family contribution to the armed struggle and the payment of small monthly allowances of approximately US$ 15 to US$ 20 per child may constitute an additional motivation for families to release their children. This would in no way diminish the culpability under international law for child recruitment, whether forceful or supported by family structures.

244. The underaged recruits are trained in camps where they usually remain for several months before paying home visits to their refugee or internally displaced persons camps. The Panel's interlocutors stated that recruitment takes place in most of the refugee camps in eastern Chad, namely in Iridimi (north-west Iriba), Amna Bak (north-east Guéréda), Farchana, Breidjing and Treguine (all western Adre) and Oure Cassoni (Bahai). In Oure Cassoni, in particular, recruitment is said to be most systematic as it is considered a JEM-controlled camp.

245. According to confidential information provided to the Panel, traditional leaders (Oumdas) and teachers play an active part in the child recruitment process in refugee and internally displaced persons camps. In June 2008, 13 leaders of refugee camps in eastern Chad issued a statement in which they denied those allegations. However, based on credible information provided by well-informed sources, the Panel believes that Oumdas and teachers do indeed support recruitment efforts as intermediaries between JEM, the families and their children. As regards the age structure of the children, the Panel was informed that sometimes children as young as 8 years are recruited. In most cases, however, their age is said to range between 15 and 18. The children mainly perform domestic work, but when hostilities break out they are also used in active fighting.

246. The Panel conducted interviews with four captured boys associated with JEM. Two of them were from Chad and had been recruited in Chad. The boys' testimonies reflect a range of different activities that they were asked to perform. Three of them, aged 14, 15 and 16, had received actual weapons training while the other, a 13-year-old, had not engaged in active fighting but had been used for domestic tasks for a JEM unit. The Panel is satisfied that on this subject the children spoke on their own account.

B. Response of the Justice and Equality Movement

247. JEM denies all accusations of child recruitment and use of children in armed conflict. A member of the JEM leadership stated to the Panel that the Movement had lawyers specialized in international humanitarian law who would ensure that children associated with armed groups are not being recruited. He added that JEM had no shortage of older, capable fighters so there was no need to recruit children. Additionally, he claimed that the 89 children were not part of JEM forces but were street children from Khartoum whom the Government of the Sudan used in an effort to fabricate evidence against the Movement.

C. Findings

248. In view of the available direct and indirect evidence, the Panel concludes that the JEM denials and claims lack credibility. The Panel finds that JEM is actively engaged in recruiting children for use in armed conflict. Recruitment activities take place in Darfur refugee camps in eastern Chad as well as in the Sudan, namely in Darfur. JEM trains children in the use of different weapons and uses them for both domestic work and in combat if deemed necessary. Finally, the Panel's interviews with the captured children generated no indication that the Government of the Sudan had tried to deceive the public by presenting street children as JEM fighters.

D. Legal standards

249. The following legal standards apply to children and armed conflict:

- The Convention on the Rights of the Child provides that persons who have not attained the age of 15 years do not take a direct part in hostilities.
- With particular reference to non-State armed groups the subsequent Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict provides that under no circumstances should persons under the age of 18 years be recruited or used in hostilities.
- The same threshold applies to the African Charter on the Rights and Welfare of the Child, which establishes the age of 18 as the minimum age for recruitment and participation in any armed force or armed group.
- The Additional Protocols to the Four Geneva Conventions of 1949 (1977) set 15 as the minimum age for recruitment or use in armed conflict. This applies to both governmental and non-governmental groups in both international and internal armed conflict.
- Under the Rome Statute of the International Criminal Court conscripting or enlisting children under the age of 15 years or using them to participate actively in hostilities in both international and non-international armed conflict is considered a war crime.

250. Under the Convention on the Rights of the Child every human being under the age of 18 is considered a child. Based on a list made available by the Government of the Sudan giving a breakdown of the 89 children captured by the Government of the Sudan forces during or after the Omdurman attack, the children were born between 1991 and 1997, as follows:

Year of birth	*1991*	*1992*	*1993*	*1994*	*1995*	*1996*	*1997*
Number of children	10	28	33	7	5	4	2

251. The Panel's investigations lead to the conclusion that in at least 18 cases the use of children in the Omdurman attack fulfils the objective criteria of a war crime as outlined in the Rome Statute.

252. Despite the informational gap that the exact dates of birth, i.e., day and month, are not known, the above figures indicate that 18 children under 15 years of age, i.e., those born between 1994 and 1997, were used in the course of the Omdurman attack. Depending on further verification of age, all those born in 1993 after 10 May, and thus under 15 years of age on the day of the Omdurman attack, will have to be added to this figure. It has not been possible to determine how many of those under 15 years participated actively in the fighting. However, the terminology of the Rome Statute ("using them to participate actively in hostilities") does not, according to established principles and interpretations, require children to commit acts of fighting themselves. The term "using" describes the acceptance of a child's participation to support conflict. For the requirement of active participation it is considered sufficient if a child's participation served an active support function for the armed group during the period of conflict,[10] such as cook, porter or messenger.

253. Without the requirement of an intentional element the use of children under the age of 18 constitutes a violation of other international legal norms and conventions as listed above, i.e., the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and the African Charter on the Rights and Welfare of the Child.

XII. Human rights violations

254. The Panel of Experts on the Sudan is mandated by Security Council resolution 1591 (2005) to provide information on individuals who commit violations of international humanitarian or human rights law or other atrocities. In the present report, the Panel focuses on those violations of international humanitarian law that are closely related to the arms embargo established by the Security Council in its resolutions 1556 (2004) and 1591 (2005). However, due to the regularity and scope with which human rights violations and abuses continue to be committed, the Panel provides an overview on what it considers the main areas of human rights-related concerns. The cases examined by the Panel and recorded below are illustrative examples of far wider trends of systematic institutional human rights violations found in Darfur.

A. Legal context

255. The Government of the Sudan has ratified several international human rights treaties designed to protect the rights of individuals in the Sudan. The most important treaties in the context of the work of the Panel are the International Covenant on Civil and Political Rights and, on a regional level, the African Charter on Human and People's Rights. The most relevant rights in the context of the conflict are (a) the right to life and to not be arbitrarily deprived thereof; (b) the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment; (c) the right not to be subjected to arbitrary arrest or detention; (d) the right of persons deprived of their liberty to be treated with humanity and with respect for their inherent dignity; (e) the right to effective remedy for any serious

[10] See written submissions of the Special Representative of the Secretary-General for Children and Armed Conflict to the International Criminal Court in the case of *The Prosecutor v. Thomas Lubanga Dyilo*.

violations of human rights. This includes the obligation of State authorities to bring to justice perpetrators of human rights violations since the cessation of an ongoing violation is an essential element of the right to an effective remedy;[11] and (f) the right to reparation for violations of human rights.

256. Certain guarantees may be suspended in exceptional circumstances. According to article 4 of the Covenant this does not apply to the right to life and the prohibition of torture and cruel, inhuman or degrading treatment or punishment. Also the obligation to provide effective remedy for any violation of the provisions of the Covenant is considered unable to be set aside even though not listed under article 4.[12]

B. Violations committed against people in Government detention

257. A significant number of reports on human rights violations received by the Panel relates to the maltreatment of detainees. There are strong indications that maltreatment, torture and other forms of degrading and humiliating treatment is a regular occurrence in Government detention. This appears to apply especially to individuals detained by NISS and military intelligence.

258. One typical example reported to the Panel reads as follows. On 9 June 2008, a prominent member of the community in Nyala was arrested and detained by NISS. The victim turned himself in after NISS had held his wife hostage and threatened to keep her in detention. The available information indicates that the victim was an active member of the Popular Congress of Hassan Turabi and that his arrest occurred in the context of the JEM attack on Omdurman. By 11 June 2008 the victim was dead. Indications are that he died as a result of torture. The results of an autopsy were not disclosed to the victim's family. Following a meeting between the family and the Wali (Governor) of Southern Darfur on the same day, the latter instructed the public prosecutor to initiate criminal proceedings against NISS. At the time of writing of the present report the investigations had not yielded any results.

Observations and findings

259. The Panel acknowledges that the director of NISS issued a decree in 2007 that reconfirms the rights of detainees and the obligations of officials, especially the prohibition of physical abuse and the liability of individual security officials. Despite this positive step, however, the number of credible complaints reported to the Panel strongly suggests that essential basic human rights are continually not respected.

260. The Panel raised these allegations of abuse and torture with the deputy head of NISS in Khartoum during its final meeting with authorities of the Government of the Sudan in August 2008. The response was outright denial of any violations. In view of the overwhelming number of regularly reported and documented cases, the Panel believes that this denial lacks credibility. It appears rather that a culture of

[11] International Covenant on Civil and Political Rights, General Comment No. 31, see *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 40* (A/59/40), vol. I, annex III.

[12] International Covenant on Civil and Political Rights, General Comment No. 29, para. 14.

institutionalized violence against detainees exists and needs to be urgently addressed.

C. Sexual and gender-based violence

261. The Panel notes with concern the continued regular and widespread occurrence of cases of sexual and gender-based violence, such as rape, attempted rape and related forms of sexual harassment and degrading treatment that are often committed in the vicinity of internally displaced persons camps.

262. Reports and Panel interlocutors frequently attributed cases of sexual abuse to armed Arabs who in many cases are reportedly dressed in military-style uniforms. The Panel notes with concern that a specifically high number of sexual and gender-based violence crimes has been reported since the February attacks north of El Geneina. Armed pro-Government militias as well as regular soldiers belonging to Government forces are named as the perpetrators.

263. The regular occurrence of sexual and gender-based violence crimes is aided by the circumstance that Government authorities show a reported lack of due diligence in investigating and prosecuting such crimes. The Panel was made aware of cases in which victims or their relatives who intended to file a complaint with Government police or judicial authorities were either sent away or threatened if they did not drop the charges. Another deterrent to seeking help from police and governmental authorities is the widespread practice of charging the female complainant with adultery.

264. An additional obstacle is a lack of civilian police in many areas, as well as a lack of confidence in Government authorities. Also local customs of handling rape cases through traditional mechanisms such as compensation payment prevent the punishment of perpetrators.

265. Authorities of the Government of the Sudan counter the allegations of widespread sexual violence with the argument that international media and agencies exaggerate the severity of the matter. One often heard argument is that in other conflict zones the numbers of rape and other sexual violence cases were significantly higher.

266. The following cases reported to the Panel are examples of these widespread sexual and gender-based violence abuses:

(a) In December 2007, three armed men raped a woman and a girl close to the internally displaced persons camp at Mornei in Western Darfur. The victims were on their way back home from their farms when the perpetrators raped them. The victims reported the crime to the police, who reportedly did not take action;

(b) In December 2007, four men in green and blue uniforms attacked a girl from the internally displaced persons camp near Zalingi (Western Darfur). The girl was working on her family's farm, together with her grandfather and younger sister. The sister escaped and informed nearby neighbours who asked the police for help. In the meantime, the perpetrators pointed a gun at the grandfather's head and raped the victim in front of him. Later the police brought her to hospital for treatment;

(c) In January 2008, four women left the internally displaced persons camp at Kalma (Nyala, Southern Darfur) to conduct agricultural activities. Four armed

men dressed in uniform-style clothes fired gunshots in their direction. They approached the women and accused them of providing shelter to members of armed opposition groups in the camp. Subsequently the attackers raped all four women. They received medical treatment in the camp but refrained from reporting the incident to the police;

(d) In March 2008, members of the Central Reserve Police reportedly attacked four refugee girls in Sirba, Western Darfur. The victims were on their way from Birak (a Darfurian refugee location in Chad) to Sirba. The victims were forced to accompany the perpetrators to the Central Reserve Police base, where they were raped in the presence of other Central Reserve Police members. The Central Reserve Police commander did not investigate the crime, reportedly referring to both victims' refusal to provide a statement to him;

(e) In January of 2004, in a camp in Southern Darfur an internally displaced person girl was reportedly raped in her home by a man in civilian clothes armed with a knife. The case was reported to the Nyala police and the perpetrator was apprehended shortly after the incident and subsequently charged with the offence of rape. During the subsequent court proceedings the perpetrator was convicted for gross indecency instead of rape and sentenced to two years in prison and a compensation payment. According to the prevailing interpretation of Sudanese criminal law the criminal offence of rape requires adultery as a precondition that again requires either a confession or four adult witnesses. The threshold for gross indecency is significantly lower.[13]

Observations and findings

267. The Panel is not able to deliver a reliable estimate of the number of cases of sexual and gender-based violence committed in Darfur. However, the comparison of mere numbers is irrelevant to explain the impact of crimes related to sexual and gender-based violence in the context of the Darfur conflict. The deciding fact is that a situation prevails in which sexual crimes can be committed under impunity. Women face the risk of being raped when venturing out of the camp and men of being otherwise assaulted. This has resulted in an atmosphere of fear. The affected internally displaced person population faces a restriction of their freedom of movement that makes them feel like prisoners and prevents them from pursuing additional income generating activities such as firewood and grass collection and cultivation. Thus they are practically confined to the camps, with little opportunity to reduce their dependence as displaced persons.

268. It was reported to the Panel, however, that in limited cases local authorities took action and initiated judicial proceedings against the alleged perpetrators. This appears to be the exception rather than the rule and can thus not be considered as the beginning of a positive trend.

269. Of additional concern is the fact that even when a perpetrator is put on trial, the Sudanese legal system is not capable of delivering adequate sentences. The prevailing interpretation of Sudanese law puts unrealistic evidentiary burdens on the prosecution that in the vast majority of cases prevents any conviction for rape. This

[13] Article 151 of the Sudan Penal Code 1991. Gross indecency: "There shall be deemed to commit the offence of gross indecency, whoever commits any act contrary to another person's modesty, or commits any sexual act, with another person not amounting to adultery or sodomy ..."

can be seen in the above documented cases of sexual and gender-based violence (see para. 266 (e)).

D. Attacks on internally displaced persons camps

1. Rwanda camp, Tawila

Background

270. Tawila has always been a troublesome location in the history of the Darfur conflict. In 2004 the town fell to the then unified SLA after a battle with forces of the Government of the Sudan. At the beginning of 2005, Government troops launched an unsuccessful attempt to resume control over Tawila. After the split of SLA into Abdel Wahid (SLA/AW) and Minni Minawi (SLA/MM) groups the latter took over control. The Government of the Sudan maintained a Central Reserve Police post on a nearby hill a few hundred metres away from the UNAMID camp. The civilian population of Tawila was affected by fights between the SLA/AW and SLA/MM groups as well as fighting between SLA/MM and the Central Reserve Police. The Rwanda camp came into existence in September 2005 when the Central Reserve Police and SAF jointly launched a previous attack on Tawila town and another internally displaced person camp.

Attack of May 2008

271. On 12 May 2008 members of the Central Reserve Police launched an attack on civilians in the Rwanda camp and in Tawila town, located approximately 60 kilometres west of El Fasher. The camp is located in the immediate vicinity to the UNAMID military group site.

272. At 11 a.m. one Central Reserve Police member was killed near the Tawila market area. Around noon Central Reserve Police forces surrounded the internally displaced person camp, opened fire indiscriminately, burned and looted civilian dwellings and shops and destroyed the market area. The same occurred in Tawila town itself. According to a witness who inspected the area three days after the incidents, 29 homes inside and outside the camp were burnt and 90 per cent of the Rwanda camp market was destroyed by fire and shooting. No casualties were reported.

273. At around 2.30 p.m., the Central Reserve Police gradually responded to appeals by UNAMID to cease fire and withdrew from the camp at around 4.30 p.m. At midnight Central Reserve Police members returned to the camp and continued to loot.

Photo 33
Members of the Central Reserve Police during the attack on Tawila camp

Photo 34
Tawila camp burning as seen from the UNAMID military group site

Observations and findings

274. The Panel spoke with an eyewitness who attended a subsequent meeting between internally displaced person tribal leaders, UNAMID representatives and the Tawila Central Reserve Police commander. According to the Panel's witness, the commander explained that the attack was a reaction of his men to the prior killing of their comrade. He also said he opposed the transgression of his troops but admitted he had little authority over his men. He added that he was unable to order his

subordinates to return the looted goods. The Panel finds that the Central Reserve Police forces committed an act of unlawful collective punishment driven by the desire to revenge and, taking advantage of the situation, to loot.

275. According to the Darfur Peace Agreement the Central Reserve Police forces do not have the right to be present in Tawila centre and the nearby internally displaced person camp. Article 26, paragraph 268 (c), of the Agreement assigns policing tasks to the movements recognized as being in control of a designated area. In Tawila, the Central Reserve Police have no policing role according to the territory held at the time of the signing, Tawila is recognized as SLA/MM territory, and, hence, the responsibility of policing falls upon the latter faction.

276. Additionally, the attacks constitute a violation of article 26 of the Darfur Peace Agreement, which provides under paragraph 262 (a) and (b) that the parties reaffirm to respect the rights of internally displaced persons and to refrain from activities that undermine the safety, security and welfare of internally displaced persons.

277. The attacks also violate the Guiding Principles on Internal Displacement, which emphasize the primary duty of national authorities to protect internally displaced persons and prohibit any attack on internally displaced person camps. More specifically, principle 21, paragraph 2, provides:

> "The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:
>
> (a) Pillage;
>
> (b) Direct or indiscriminate attacks or other acts of violence;
>
> (c) ...;
>
> (d) Being made the object of reprisal;
>
> (e) Being destroyed or appropriated as a form of collective punishment" (E/CN.4/1998/53/Add.2).

278. The incident moreover demonstrates the prevailing impunity for illegal acts committed by members of the Government forces. According to the information available at the time of writing the present report the responsible commander of the Central Reserve Police was transferred to an unknown location. No investigation has been launched into the incidents.

2. Kalma camp

279. In the early morning hours of 25 August 2008 up to 1,000 forces comprised of the National Intelligence and Security Services, SAF and police launched an attack on Kalma internally displaced persons camp at Nyala, Southern Darfur. The Government forces allegedly wanted to enter the camp to execute an arrest warrant but a crowd of internally displaced persons, including women and children, prevented them from doing so. Subsequently, the Government forces opened fire and killed at least 32 individuals, among them 10 women and 7 children. The Panel had already left the Sudan on the day of the incident and therefore was unable to conduct its own inquiries. The Wali of Southern Darfur has reportedly appointed a commission of inquiry into the incident.

Observations and findings

280. Based on the preliminary information available, the incident appears as a clear violation of most basic human rights norms, namely the right to life. It also violates other standards such as the Guiding Principles on Internal Displacement and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. These rules oblige security officials to exercise restraint and to minimize damage and injury and Government authorities to punish those responsible for arbitrary and abusive use of force. At the time of writing the present report there was no further information as to the details, namely the investigations initiated by the Government of the Sudan and the punishment of those responsible.

E. Human rights abuses committed by armed opposition movements

281. During the reporting period civilians continued to bear the brunt of internal fighting between different rebel factions and abuses carried out in territory under their control. Some examples of these abuses reported to the Panel include the following:

(a) In April 2008 in the area of Kafod (Northern Darfur) where reported fighting between SLA/MM and SLA/FW, both signatory factions, caused large scale displacement of the civilian population, the death of more than 10 civilians and large-scale destruction of dwellings in Kafod and neighbouring villages;

(b) The information available strongly suggests that the signatory group Movement of Popular Forces for Rights and Democracy in the area of Masteri, Western Darfur, commits regular human rights abuses. The movement is accused of conducting illegal arrests and detention, issuing death threats, forcing citizens to pay ransom money, maltreating and torturing detainees and abducting civilians;

(c) SLA/MM members are accused of regularly committing human rights abuses against detainees. Several reports from Northern Darfur indicate that the movement holds individuals in undefined and prolonged detention without presenting the detainees to a judicial authority. Severe beatings and other forms of maltreatment and torture appear to occur regularly.

Findings

282. Although it is the primary responsibility of the Government of the Sudan to guarantee the human rights of its citizens and to protect them from any transgression, the different armed opposition movements also bear responsibility in areas under their control. Both signatories and non-signatories to the Darfur Peace Agreement show an increased tendency to systematically disrespect civilians' fundamental rights. Apart from using children associated with armed groups, rebel factions are accused of arbitrary arrest and detention, maltreatment, torture and killing of detainees, abduction and forced disappearance, extortion of money, imposed taxation on communities and incidences of sexual and gender-based violence. A Darfurian human rights activist who is in principal supportive to the movements stated to the Panel that many rebel factions had dissociated themselves from Darfurian society and fought in the war without consideration for civil society and the rights of civilians.

XIII. Financial aspects of embargo violations

A. Legitimate taxes and oil revenues

283. The principal source of funding for arms embargo violations committed in the Darfur region and for supporting non-State armed groups that operate in the wider Sudanese-Chadian region is largely based on the two involved States' ability to raise legitimately taxes and other revenues. The most lucrative single source of income for the Sudan and Chad are derived from their recently established oil production and exportation capacity.

284. The Sudan's economic growth averaged roughly 7 per cent per annum between 2000 and 2006, and an estimated 10 per cent in 2007, which has resulted in an increased per capita income from $340 in 2001 to $810 in 2006. Yet, the newfound wealth of Sudan remains inconsistent. The State has accumulated $1.3 billion in domestic arrears, and development inequalities pitches Khartoum and some northern States that show development indicators similar to middle-income countries with Darfur where the indicators remain comparable to the lowest in the World. In 2007 the gross domestic product was estimated at about $80 billion. It is estimated that the military budget is about 3 per cent of the gross domestic product. Thus, the Sudan's revenues from oil, agricultural exports and regular taxations allows the State to fully fund its military presence in Darfur, its actions against the Darfur rebels and support for Chadian armed opposition groups.

285. Chad too has experienced record economic growth rates while a large section of its population remains steeped in poverty. Chad's gross domestic product is currently about $16 billion after a growth rate of 9 per cent per year since 2001. In 2004, it reached a record growth rate of 30 per cent after oil production was initiated the previous year and production rose quickly to 200,000 barrels per day. Although oil production has decreased since then, rising oil prices has maintained higher than expected revenues from the energy sector. Chad is currently expending about 4 per cent of its gross domestic product for military purposes.

286. The armed forces of the Sudan and of Chad, including their auxiliary forces and security units as well as their proxies are sustained through their Governments' legitimate tax revenues. To the extent that the Sudanese and Chadian armed opposition groups receive support from either the Governments of the Sudan or of Chad, they too benefit from these States' revenues. Additional support through the Government of Chad for certain Sudanese armed groups, and through Sudanese military and security channels to proxy fighting forces such as the Janjaweed or border guards, and Chadian armed opposition groups, is provided in the form of direct material support, such as vehicles, arms or communication equipment.

B. Illegal taxation and income-generating schemes

1. Taxes

287. Supplemental income to most of these groups is derived from their own taxation systems to which they subject civilian populations under their control. These fund-raising mechanisms are opaque and applied unequally. In reality, such taxation schemes appear to be akin to the shake-downs and racketeering of organized crime groups, and are therefore illegal by any standard.

288. Representatives of SLA, JEM and JEM-Collective Leadership that the Panel has questioned explained that as legitimate replacements for the Government of the Sudan they claimed an equal right to impose taxes on the civilian population. On the other hand these representatives were not willing to provide detailed descriptions of the tax collection system that they were applying. Neither were they willing to provide data regarding the amount of taxes being raised, how they assessed taxable income or who among the rebel leaders assumed the overall responsibility for the tax collection.

2. Microcredits

289. An additional dimension of these illegal taxation schemes involves the armed groups' alleged close relationship with local farmers. According to SLA, JEM and JEM-Collective Leadership representatives, it is of vital importance that in "liberated" areas agricultural and other economic activities are stimulated as quickly as possible. Essentially, fighting forces of all rebel groups depend on local farming communities for food and other supplies. Therefore, whenever an armed group has taken over and secured an area, they encourage farmers to restart planting or livestock breeding as early as possible. At times and where needed, SLA and JEM have indicated their willingness to extend microcredit to enable farming. Such credit is being extended with the understanding that JEM or SLM combatants will be supplied with food as and when they require it. None of the questioned groups provided detailed explanations about who in their group has assumed the overall responsibility for the administration of such loan schemes, or what interests and other fees are imposed on the creditors.

3. Carjacking

290. Another form of fund-raising for the Sudan's armed opposition groups is roadside extortion and banditry involving vehicles and other equipment used by international actors present in Darfur and the eastern provinces of Chad.

Carjacking in Chad

291. Significant increases of illegal activities and banditry have been observed related to arms embargo violations. From the beginning of November 2005 to the end of July 2008, a total of 129 vehicles owned either by United Nations organizations or non-governmental organizations operating in the eastern part of Chad have been hijacked or stolen. In several cases drivers and passengers have been injured, and in a few cases they have been killed. While many of these vehicles have eventually been recovered, some with significant damages and usually with all of the contents removed, 57 of these vehicles have not been recovered to date. During the first six months of a wave of carjackings, United Nations security determined during its investigations the whereabouts of a number of vehicles. It established that 50 per cent of the stolen cars were to be found across the border in the Sudan in use with individuals associated with armed groups or Sudanese government officials.

292. One case that exemplifies this problem is a Toyota Land Cruiser that was leased by an international non-governmental organization in Abeche from a local merchant in May 2008. The vehicle was carjacked by four men armed with automatic rifles, stealing in the process all the belongings of the four passengers,

including laptop computers and passports. As soon as the owner of the vehicle was notified of the carjacking he pursued the vehicle, following the leads given by witnesses who indicated that the vehicle had been seen moving in the direction of the Chadian-Sudanese border. Eventually he tracked the vehicle to El Geneina and the house of a militia leader by the name of Gibril Abdullah, brother of the local police chief. During his subsequent attempts to recover his vehicle he was forced to pay $3,000 to obtain its return. The vehicle in question was last seen in El Geneina freshly painted and inscribed in Arabic with the words "Border Guard".

4. Looting of Thuraya phones

293. Another form of what could be considered a source of illegal financing in the form of theft and looting, took place during the January/February attacks on N'Djamena. During the fighting the storage facilities of SOGECT, the local dealership for Thuraya phones, were looted. The owner of the company, Abderaman Hassan Mahamat Itno, stated to the Panel that 1,000 Thuraya phone sets along with 1,000 SIM cards were taken from his premises along with many other items. Further complicating this case is the fact that Mr. Itno officially reported only 290 Thuraya model 7101 phones as stolen and no SIM cards as missing. The Panel has not been able to ascertain the technical requirements to operate stolen or improperly activated satellite telephone sets.

294. Mr. Itno's role in this matter may require further attention due to his reluctance to fully disclose his involvement in the importation of Toyota Land Cruisers from the United Arab Emirates to Chad. Several witnesses have alleged to the Panel that Mr. Itno is a businessman with suspected strong links to JEM, and has been organizing supplies for Sudanese armed opposition groups.

5. Vehicle importations to Chad

295. In April 2008, the Government of the Sudan brought to the attention of the Panel two consignments of a total of 17 vehicles and various consignments of general goods that Sudanese customs had impounded during a technical stop of two airplanes at Khartoum airport. The two aircraft had arrived in Khartoum from the Fujairah International Airport in the United Arab Emirates and were en route to N'Djamena. The Government of the Sudan later decided to return the general goods to their rightful owners but impounded the vehicles. The reason given was that the vehicles were going to N'Djamena as part of a supply chain organized by a local businessman with suspected strong links to JEM and that they would eventually be provided to JEM who would in turn transform them into "technicals".

296. The Panel investigated these two shipments and the individuals involved with the following results.

Shipment No. 1

297. The first was organized by Goldstar Cargo and Clearing based in Dubai, which is controlled by Barcai Mohamed Abdel Karim. Mr. Karim stated to the Panel that he had organized approximately 20 shipments of similar vehicles as well as general goods to N'Djamena. He identified as recipients in the Chad Société Golden Star Tchad, with the General Manager being Hassan Adam Kissine and the Deputy Manager, Mahamat Hamid Kona. Witnesses have explained to the Panel that the ultimate recipient however is a relative of the Minister of Defence of Chad.

Photo 35
East Wing Ilyushin-76 with registration number UN-76011

298. The shipment was made using flight "East Wing registration No. UN-76011", which arrived in the early morning hours of 5 April in Khartoum, refuelled, took off in the direction of N'Djamena but returned 40 minutes later due to technical difficulties. Upon landing, the airport authorities in Khartoum seized goods and vehicles identified in the shipping manifest in the following manner:

Toyota Prado, Chassis No.: JTEBK29J80031974

Toyota Pickup, Chassis No.: JTFLJ73J086043440

Toyota Pickup, Chassis No.: JTFLJ73J586042171

Toyota Pickup, Chassis No.: JTFLJ73J786044164

Toyota Pickup, Chassis No.: JTFLJ73J686042468

Toyota Pickup, Chassis No.: JTFLJ73J186042457

Toyota Pickup, Chassis No.: JTFLJ73J286042192

Toyota Land Cruiser, Chassis No.: JTFLJ73J286042533

Toyota Land Cruiser, Chassis No.: JTFLJ73J786042284

Shipment No. 2

299. The second shipment was organized by Mahamat Issa M. Mustafa through his company Al Aumdah Auto Spare Parts Dubai. Mr. Issa stated to the Panel that he too has been organizing vehicle shipments on a regular basis and that for that purpose he was employing the services of Massawa Clearing and Forwarding, also based in the United Arab Emirates. The shipment would be sent to SOGECT-Tchad, which is owned by Abderaman Hassan Mahamat Itno. Massawa contracted a Badr Airlines Ilyushin-76 ST-BDE to carry this cargo and it arrived in Khartoum on 9 April 2008. No data about the vehicles was included in the shipping manifests.

6. Judicial proceedings

300. The Panel investigated legal assistance and extradition requests made to the authorities of the United Arab Emirates by the Government of the Sudan in connection with some of the organizers of these shipments. During a meeting with the Ministry of Justice of the Sudan the Panel requested additional information concerning bilateral efforts in prosecuting these individuals. The Panel also requested copies of the legal assistance and extradition request submitted to the United Arab Emirates and any other relevant information concerning this matter. No information has so far been received from the Ministry of Justice in response to this request.

301. The Panel discovered via its own sources that in response to the Government of the Sudan's request to the authorities of the United Arab Emirates, from 21 to 23 June a number of individuals associated with Goldstar Cargo and Clearing of Dubai, including its principal Barcai Mohamed Abdel Karim, were detained by local security forces. Mr. Barcai, who appears to have citizenship in the Sudan, Chad and the United States of America, along with his associates, who have Canadian, French or Sudanese and Chadian citizenship, were detained by authorities of the United Arab Emirates for several weeks until their respective diplomatic representations to the United Arab Emirates intervened. Upon their release they were asked to leave the country.

302. The Panel further learned that similar cases have occurred in the past, where the Ministry of Justice of the Sudan has intervened with the judicial authorities of the United Arab Emirates. In 2003, the Sudanese authorities sought legal assistance in its prosecution against a number of Sudanese-Chadians residing in Dubai or elsewhere in the United Arab Emirates who were involved in shipping vehicles to neighbouring states of the Sudan. The Government of the Sudan declared to the United Arab Emirates that the exportation of Land Cruisers would benefit insurgency movements and was therefore a conspiracy against the State. Panel investigations to date indicate that no individual has thus far been extradited to the Sudan in response to these requests but that all of the individuals named were asked by the Government of the United Arab Emirates to leave the country.

Observation

303. The fact that the Government of the Sudan has already, in two documented instances, acted bilaterally with legal instruments against those who are involved with the international trade of four-wheel drive vehicles should be considered an important precedent. In these documents and with its bilateral actions the Government of the Sudan has gone on record to say that it considers such vehicles to have military application even in their unfurnished state when they are being traded or imported into neighbouring countries. Therefore, the Sudan establishes the precedent that these vehicles are relevant in the context of embargo violations. As a consequence, the Government of the Sudan itself should be held to the same level of responsibility if it allows its own military and security officers to transfer vehicles of identical types into Darfur.

C. Strategy of delays and obstruction by the Government of the Sudan

304. Given that the Government of the Sudan has a long tradition of maintaining close control over important economic functions in its country through parastatal companies there is a need to closely analyse the role and activities of such corporate entities. The Panel attempted to establish and, where appropriate, identify any services or contributions that may violate the relevant stipulations of United Nations resolutions. However, inquiries by the Panel designed to better understand the precise identity and activities of such parastatal companies have been significantly delayed, obstructed, and undermined by the Government of the Sudan.

305. One method with which the Government has obstructed the Panel's work in this area was by attempting to deny it its independence. The focal point of the Government of the Sudan attempted to impose, for example, the rule that the Panel was not to enter into direct contact with private companies. This attempt in itself significantly undermines the independence of the Panel's investigations. It is also a highly effective way of delaying and thwarting the most basic information collection efforts of the Panel of Experts. In line with this, the Panel's focal point in the Government of the Sudan simply never facilitated direct contacts with the companies that the Panel had requested to meet.

306. Another method with which the Government undermined the work of the Panel was to deny and/or ignore the most basic information requests. The Panel has for example attempted to establish whether a corporate entity is in fact a parastatal or private company. In order to do so, it requested copies from the Sudan's corporate registry for each of the relevant corporations. The Panel followed the Government's direction and made its request through its focal point in the Government, despite the fact that these are publicly available documents. It specifically requested the corporate registry data regarding shareholders, officers and directors, along with possible subsidiary or affiliated entities, addresses of corporate head offices, and indications as to how long the corporation has been active/inactive. None of this data was ever received from the Government of the Sudan.

XIV. Impact of attacks on international humanitarian organizations and peacekeeping missions

307. Humanitarian actors operating in Darfur have become easy prey for a vast array of Darfur armed elements in search of resources. Seeking to sustain their operations and justify their claims as rebel movements or simply for the purposes of self-interested criminality, such armed elements have increasingly made United Nations agencies, international non-governmental organizations and other humanitarian organizations the targets of banditry, carjackings and outright attack.

308. The deliberate targeting of the aid community via attacks on convoys, offices and accommodation compounds has become commonplace. Occurring on a daily basis throughout the three states of Northern, Southern and Western Darfur, the inevitable result has been a corresponding decline in access to vulnerable populations.

309. Targeting of the aid community has extended to the targeting of the peacekeeping missions working in Darfur. Attacks on peacekeepers are a potential method of obtaining civilian and dual-use equipment by bandits and armed groups. Assaults on the peacekeeping operations of AMIS and UNAMID have both had the added dividend for rebels of serving as sources of arms and ammunition. These attacks have resulted in the loss of significant numbers of UNAMID civilian and military personnel, and proved the inability of UNAMID to defend itself militarily or to deter repeat attacks.

310. The Panel has received direction from the Security Council Committee established pursuant to resolution 1591 (2005) concerning the Sudan to look into the attack on AMIS personnel in Haskanita in September 2007, and an attack on a UNAMID fuel convoy in January 2008. In this light, the Panel has also chosen to look into the theft of 12 tons of UNAMID ammunition from a convoy in Northern Darfur and an attack in August 2008 on a UNAMID joint military and civilian police patrol. In doing so, the Panel has conducted this work in the light of the relevant provisions of its mandate. The Panel does not have the capacity to determine criminal liability outside the scope of its mandate nor to comment on any institutional failings except as they relate specifically to the provisions of the arms embargo, offensive military overflights, or international humanitarian or human rights law.

A. Attacks on peacekeeping missions

311. UNAMID, like its predecessor AMIS, suffers from a chronic lack of capacity in terms of both personnel and equipment and has done so since its deployment in January 2008. In this time, it has been attacked by both the Government of the Sudan and rebel forces. UNAMID personnel operate under the constant threat of individual attack, carjacking and banditry. Major assaults on resupply convoys in January and April and the target of a lethal offensive in July have shown that the security threats to UNAMID extend beyond low-level criminal opportunism to the specific targeting of the Mission itself. These attacks have a severe impact on the ability of UNAMID to operate and the protection of humanitarian access, and serve as an opportunity for armed groups to resupply their forces through the theft of United Nations assets.

1. Haskanita attack on AMIS

312. On 29 September 2007 members of Darfur armed opposition groups attacked the Haskanita military group site of AMIS. Ten peacekeepers were killed and another 12 were seriously injured. Most of the site's equipment, including arms, ammunition and vehicles as well as soldiers' personal belongings, was looted. The site itself was vandalized and partially burned down.

Photo 36
Aerial view of Haskanita military group site after the attack

313. Haskanita lies in the south-east of Northern Darfur about 85 kilometres from the town of Al Daein and bordering on Kordofan state. At the time of the attack, a total of 157 personnel consisting of a company of protection forces, military observers, civilian police and other civilian employees were deployed to the military group site.

314. According to Panel sources, approximately 300 attackers approached the military group site from its northern side. They were equipped with an estimated 30 vehicles, fitted with heavy weapons. Witnesses reported that the attackers' firepower greatly exceeded that of the peacekeepers. Within 30 to 45 minutes they managed to force their way into the camp, steal AMIS vehicles, and search the camp tent by tent in order to loot weapons and personal items. AMIS personnel returned fire, including from one of the armoured personnel carriers, but this was seized after 15 minutes when the vehicle's gunner was shot. Some of the soldiers fled the camp via the western side, where they passed through the wire fence and escaped into open ground. When others who were shooting at the attackers from the trenches using small arms reportedly ran out of ammunition, the attackers approached the trenches and asked the soldiers to hand over all weapons and money. Some of those who refused or tried to hide their weapons were executed.

Developments in the region prior to the attack

315. The area around Haskanita was traditionally controlled by SLM/MM. Some members of SLM/MM did not agree with the movement's policy and especially its signing of the Darfur Peace Agreement. They formed their own faction called SLM/Unity. On 3 August 2007 they officially announced to AMIS representatives the creation of the new splinter group. They also stated that they would cooperate with JEM elements present in the area. Subsequently, and in an attempt to drive the SLM/Unity and JEM forces out of the area, SAF conducted several attacks on Haskanita, including aerial ones.

316. On 6 September the local population protested against these attacks and called on AMIS either to stop the Government of the Sudan from conducting their attacks or to close down the military group site. Another aerial attack occurred on 10 September, after which representatives of JEM and SLM/Unity went to the military group site and declared that if another attack occurred they would turn their guns against the site. Additionally they imposed flight restrictions on AMIS aircraft bound for Haskanita. These were lifted on 16 September.

317. A few days prior to the attack JEM forces went through a split. During a visit of JEM leader Khalil Ibrahim, a break-up occurred between him and one of his commanders, Abdallah Banda. Mr. Ibrahim left the area with his combatants while Mr. Banda remained in Haskanita with individuals loyal to him. Cooperation between SLM/Unity and the JEM Banda faction continued.

Findings

318. The attack on the AMIS Haskanita military group site was an intentional attack against personnel, installations and vehicles involved in a peacekeeping mission and thus constitutes a war crime as defined in article 8, paragraph 2 (e) (iii), of the Rome Statute.

319. The available information, including interviews conducted by the Panel in the Sudan and Chad, suggests that members of SLA/Unity and the JEM faction loyal to Abdallah Banda are liable for the attack.

320. As regards the motives for the attack, the Panel's sources indicate two main reasons.

321. First, a general suspicion existed on the side of the movements that AMIS forces collaborated with the Government of the Sudan and supplied it with important military information.

322. Second, rumours of an impending massive attack by Government forces triggered the perception that urgent resupply of arms, ammunition and vehicles was needed by the armed groups. The AMIS military group site was targeted as the most viable source of this equipment because of its level of protection, with its attackers believing that they could overrun the site with acceptably low risks to themselves.

Recommendation

323. **In view of the graveness and complexity of the crime, the Panel recommends that the case be fully investigated by a competent court.**

2. Attack on UNAMID fuel convoy

324. On 5 January 2008, a UNAMID logistics convoy departed El Fasher in the direction of Tine. Because the trip necessitated two days of travel, the convoy stopped in the villages of Kutum and Umm Barro along the way. The convoy was escorted by a contingent of UNAMID military protection forces composed of 10 white AMIS armoured personnel carriers, 2 trucks with United Nations markings, 1 AMIS marked truck, and 8 civilian fuel tankers. Following its departure from the town of Umm Barro following an overnight stopover, the convoy was attacked by SAF forces when only two kilometres from its final destination. The convoy was targeted by small arms and rocket fire for nearly a quarter of an hour, resulting in

severe damage to one armoured personnel carrier, the complete destruction of a fuel truck that burst into flames and serious injury to a civilian driver who was shot.

325. During an interview with the Panel, the SAF Commander of the Western Military Region stated that SAF had received no information with respect to the movement of the UNAMID convoy and that there had been no coordination between UNAMID with SAF on the convoy's movements. The commander further stated that the convoy was unidentified, travelling at night in an area known to contain armed groups, and thus perceived by the sentries at the SAF base to be an imminent threat to the security of the base.

326. This version of events contradicts UNAMID reports which state that the Government of the Sudan was made aware of the convoy's movements and in fact had been monitoring its travel since its departure from El Fasher. The convoy had been moving at a measured pace, hampered by delays due to numerous breakdowns and had passed through numerous Government checkpoints over the course of the two days of travel prior to the attack. According to witness statements collected by the Panel, it was a clear moonlit night, and the United Nations and AMIS markings were clearly delineated on the white convoy vehicles. Even in spite of these markings, rebel forces have neither armoured personnel carriers nor fuel trucks of this size, nor are they known to travel slowly together in a convoy of this nature. It is therefore illogical for SAF forces to claim that they were unaware of the movement of this convoy or that it could be easily mistaken for a rebel attack.

327. This attack occurred early in the UNAMID mandate and shortly following its handover from AMIS. At the time, there was much controversy concerning limits that the Government of the Sudan tried to impose on the Mission's freedom of movement. The Panel is aware of strong allegations that the attack on the convoy may have been organized by the Government of the Sudan in order to reinforce its attempt to limit the night movements of UNAMID. The evidence collected by the Panel during its investigations does not allow it to support this conclusion.

3. Attack on UNAMID convoy — Al Odaiya

328. In March 2008, over 12 tons of 5.8 millimetre and 12.7 millimetre ammunition arrived in Port Sudan as part of the deployment of the Chinese military engineering contingent contribution to the UNAMID base in Nyala, Southern Darfur. Logistics arrangements for this deployment were primarily handled by UNMIS, and the cargo company Raiba Trans Sudan Ltd. that was contracted to provide ground transportation for this cargo.

329. On 22 April, this cargo departed Port Sudan on the initial leg towards its final destination. Because of security concerns, the decision had been made beforehand not to travel the full distance from Port Sudan to Nyala but to undertake the travel in two stages with the cargo changing convoys in a Raiba-owned warehouse in El Khuwei outside El Obeid.

330. The first segment of this travel was completed without incident. During the second segment, in an area known for banditry and attacks on commercial convoys, the vehicles carrying this ammunition and other supplies were attacked and the cargo was stolen.

331. It is clear that the transport of this ammunition was carried by a commercial contractor on behalf of the United Nations through an insecure area of Darfur with

no United Nations security provisions. When the Panel tried to conduct its own investigations into the elements of this loss that could pertain to its mandate, it discovered that there was very little knowledge within UNAMID as to the circumstances surrounding this attack. It was also discovered that UNAMID has no internal system to centrally record the arms and military materiel it brings into Darfur under its exemption from the provisions of the arms embargo. To date, the Panel has not been able to discover the exact markings, lot numbers, and packaging details of the lost items. A UNAMID board of inquiry was initiated with the intention of ascertaining the specifics of this incident.

Recommendations

332. **The Panel recommends:**

(a) **That a full review be conducted of the procedures of the Department of Peacekeeping Operations as it relates to the transport, storage and receipt of arms and related materiel in areas subject to a United Nations arms embargo;**

(b) **That a central internal register of UNAMID arms and ammunition be created identifying all arms and ammunition brought into Darfur under the exemption to the arms embargo in order for any loss or leakage of materiel to be addressed in a timely manner. The Panel also recommends that this information be kept up to date by UNAMID and be accessible to the Panel and UNAMID structures for monitoring the arms embargo.**

4. Attack on UNAMID patrol — Gusa Jamat

333. Panel sources state that on 8 July 2008 a UNAMID patrol convoy left from Shangil Tobaya (Northern Darfur) to Gusa Jamat via Dar es Salaam and Wadah with an expected return on the same day. The convoy consisted of UNAMID protection force soldiers, police advisers, military observers and language assistants travelling on 13 vehicles, including armoured personnel carriers and four-wheel drive vehicles. Upon its return from Gusa Jamat towards the village of Wadah, members of the convoy observed vehicles with machine guns at the rear of the convoy moving in the same direction. When about 12 kilometres from Gusa Jamat the convoy came under fire from two sides. Up to 300 attackers are said to have approached on approximately 40 vehicles. The attackers appeared well equipped with weapons such as general purpose and heavy machine guns, twin barrel anti-aircraft guns, recoilless rifles, rocket-propelled grenades and mortars. These attackers were more heavily armed than the UNAMID protection force. They were reportedly dressed in green or desert camouflage and some wore civilian clothes.

334. A subsequent exchange of fire reportedly lasted for 2 hours. Seven UNAMID troops and police were killed and 22 were wounded, 7 of them critically. The attackers physically assaulted the survivors before stealing 10 of the UNAMID vehicles and associated equipment.

Findings

335. The Panel found that:

(a) Circumstances strongly suggest that UNAMID members were the victims of a well-organized and premeditated attack by attackers who were well equipped with a range of heavy weapons;

(b) The attack took place in an area under the control of the Government of the Sudan;

(c) The police leadership of Northern Darfur was reported to have declared that it would not to investigate the crime since it was an incident between UNAMID and rebel forces. The same explanation was reportedly repeated by intelligence officials.

Recommendation

336. **As a proper investigation of crimes of such graveness and complexity exceeds the capacities of the Panel, the incident should be investigated by a competent court.**

B. Conclusions

337. The endemic targeting of international organizations and ongoing attacks on peacekeeping operations in Darfur is a cyclical process that fuels a spiral of violence. The more these attacks take place, the more the armed groups gain in terms of the capacity to conduct attacks, and the more difficult it is for UNAMID and the humanitarian community to conduct their activities to promote peace and address humanitarian problems in Darfur.

338. This increasing instability fuels the continued fragmentation of armed groups. These groups exist in a climate where the assets needed to support an armed group in terms of vehicles and non-lethal equipment are readily available through attacks on humanitarian convoys and thus the more successful fragmented armed groups are those that are able to steal the most from the humanitarian community.

339. Multiple, successful attacks on peacekeeping forces now reinforce the perception that the benefits of a successful attack on peacekeepers through the potential to gain arms and related equipment outweigh the risks posed by conducting such an attack on such a lightly armed peacekeeping force. The potential for any internal acquisition of arms and related materiel within Darfur inherently undermines attempts to stem the supply of this materiel to belligerent parties through the imposition of a United Nations arms embargo.

340. The response by the United Nations and the Government of the Sudan to the attacks listed above has been minimal and in itself is a weak deterrent to future attacks of this nature. This undermines the reputation of peacekeepers that is essential to instil confidence in their capacity to provide security in Darfur.

341. The decline in humanitarian access as a result of this situation has continued during this mandate period and affects all humanitarian and United Nations actors from the smallest local and international non-governmental organizations to the largest operators, such as WFP and UNAMID. Vehicles are hijacked on a daily basis and deliveries of aid by the major aid operations have not only been threatened, but have had to be reduced due to security threats to their operations.

342. The Panel considers that within the terms of its mandate there are additional actions that, if given the requisite support and put in place in a timely manner, would help address and thus contribute to mitigate the threats. These actions are

contained in the recommendations inserted throughout the present report and in the following overarching recommendations section.

XV. Overarching recommendations

Recommendation 1

343. **In the light of the ongoing violations of the arms embargo, the Panel reiterates its previous recommendation that the Security Council revisit options for strengthening the arms embargo by expanding it to the entire territory of the Sudan (S/2006/250, para. 60), and recommends further expansion of the embargo's coverage to include Chad and northern parts of the Central African Republic. As an initial phase the additional embargo could be applied to eastern Chad and the northern Central African Republic, with monitoring undertaken in line with recommendations 3 and 4 below.**

Recommendation 2

344. **The Panel recommends the implementation of monitoring mechanisms at airports, seaports and road links throughout the territory subject to the extended embargo. The system should see the removal of limitations of the Government of the Sudan on the access of UNMIS, UNAMID and the Panel of Experts to material such as flight logs at the Khartoum, El Fasher, El Geneina and Nyala airports and allow for unanticipated cargo spot checks with a view to verifying that the cargo of commercial aircraft, road and rail transport travelling into Darfur is not in violation of the arms embargo.**

Recommendation 3

345. **Paragraph 9 of Security Council resolution 1769 (2007) mandates UNAMID to monitor the arms embargo on the territory of the three States of Darfur. UNAMID has not yet implemented a strategy for fulfilling this element of its mandate. The Panel of Experts has tried in so far as possible to maintain a permanent presence in Darfur during the present mandate to supplement this deficiency within UNAMID. A Panel of only five members, however, cannot match the potential monitoring capacity of a peacekeeping mission. The Panel has offered to contribute to a UNAMID strategy for needs identification and implementation of an effective strategy for monitoring of the embargo, as UNAMID engagement on this issue is considered to be an urgent priority.**

346. **Accordingly, the Panel recommends the immediate mainstreaming of arms embargo monitoring within UNAMID peacekeeping operational structures. This would entail the creation of a dedicated arms embargo cell within UNAMID. The Panel further recommends that this cell be responsible for documenting violations in accordance with paragraph 6 of resolution 1591 (2005) concerning military overflights, in addition to the responsibilities outlined in its mandate in paragraph 9 of resolution 1769 (2007) relating to the measures imposed in paragraphs 7 and 8 of resolution 1556 (2004) concerning the arms embargo.**

347. **The Panel also recommends that the UNAMID arms monitoring cell be provided an enhanced capacity and authority to carry out inspections at**

sensitive airports, roads and rail links. The cell would coordinate its findings with the Panel of Experts as well as other international peacekeeping and protection missions operating in the region and other relevant Security Council sanctions monitoring groups.

Recommendation 4

348. **The establishment of multidimensional international peacekeeping and protection force operations along the shared tripartite border between Darfur, Chad and the Central African Republic, as well as within southern and northern Sudan, presents a unique opportunity for the international community to contribute to peace and stability in the region. This is particularly true as it relates to the effective monitoring of potential violators of the arms embargo.**

349. **Accordingly, and in line with recommendation 1 above, the Panel recommends the immediate mainstreaming of arms embargo monitoring within the operational structures of UNMIS, MINURCAT and EUFOR. As in recommendation 3 above regarding UNAMID, this would entail the creation of dedicated arms embargo cells within the respective missions. Analogous to the UNAMID model these cells would be responsible for documenting violations of the measures imposed in paragraphs 7 and 8 of resolution 1556 (2004) concerning the arms embargo. In the case of MINURCAT and EUFOR, the cells would also be responsible for monitoring violations of paragraph 6 of resolution 1591 (2005) concerning the execution of offensive military overflights along the border region. These tasks would also apply to the terms of the extension of the arms embargo suggested in recommendation 1 above.**

350. **The Panel further recommends there be institutionalized practical cooperation mechanisms between UNAMID, UNMIS, MINURCAT and EUFOR with respect to embargo monitoring and verification missions. This would particularly apply to data collection, monitoring, analytical capacity, information-sharing and the identification of trends and criminality and the modus operandi of illicit arms movements.**

Recommendation 5

351. **In its third report (S/2006/795, para. 91), the Panel recommended that countries which conduct trade in military goods and services with the Sudan implement a self-imposed requirement for end-use certification. The Panel reiterates this recommendation and recommends an enhancement to the proposed verification system for the end use of weapons exported to the Sudan in the form of:**

(a) **The immediate voluntary cessation of sales of arms and related materiel to the Sudan by export countries where it can be proven that the end use of previous deliveries to the Government of the Sudan has violated the arms embargo;**

(b) **The imposition of targeted sanctions on leaders within SAF and the Ministry of Defence when arms and military equipment supplied with end-user certification have proven to have been subsequently used in Darfur.**

Recommendation 6

352. **The Government of the Sudan to be required to immediately remove from the region all identified post-embargo military equipment, weapons and munitions, and aircraft transported into Darfur in violation of the embargo.**

Recommendation 7

353. **It is recommended that the Security Council significantly enhance the capacity of the Panel of Experts to conduct a greater number of in-depth investigations into violations of relevant provisions of resolutions 1556 (2004), 1591 (2005) and 1779 (2007) and other special investigation requests made by the Committee. It is therefore recommended:**

(a) **That the Panel of Experts on the Sudan be supported with the additional capacity in terms of personnel and resources necessary to coordinate the monitoring and investigation of violations of an extended embargo comprising additional territory in Chad and the Central African Republic, and to liaise with regional peacekeeping missions;**

(b) **That in order to fulfil its current obligations the Panel of Experts be provided additional field capacity allowing it to have a permanent investigative presence in at least each of the three Darfur States in order to investigate individuals who violate international humanitarian law and human rights law and to target individual violators for potential sanctions.**